4-14-88
Vol. 53 No. 72
Pages 12371-12508

federal register

Thursday
April 14, 1988

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Contents

Federal Register

Vol. 53, No. 72

Thursday, April 14, 1988

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 53, No. 72
Thursday, April 14, 1988

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Administrative Rules and Regulations (Reporting Rail Shipments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends procedures for reporting rail shipments of navel and Valencia oranges, which are contained in the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders. Currently, the administrative rules and regulations of the orders provide that all handling of navel and Valencia oranges, other than shipments by rail car, must be accompanied by N.O.A.C./V.O.A.C. Forms No. 8, which are Certificates of Assignment of Allotment covering each quantity of oranges so handled. These forms contain, among other information, proof of shipment by truck of such oranges. These reports also provide the Navel and Valencia Orange Administrative Committees (Committees), the agencies responsible for the local administration of the orders, with the information required to successfully conduct audits and compile data during an investigation of possible violations of such regulations. Presently, similar data is not available for rail car shipments. This rule will require handlers of navel and Valencia oranges to report all rail shipments of such oranges by submitting with their daily manifest reports, a signed bill of lading or other documentation acceptable to the Committees for each rail shipment to substantiate shipments of such oranges.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC. 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatability.

There are approximately 123 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three fiscal years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

The Committees meet each week during their respective marketing seasons and may recommend to the Secretary a quantity of navel or Valencia oranges which may be handled in each prorate district during a specified week. If the Secretary finds that this quantity will tend to effectuate the declared policy of the Act, the Committees then allocate allotments to each handler for that week. A handler's weekly allotment is an amount equivalent to the product of the handler's prorate base (the amount of oranges under the handler's control in a prorate district as compared to the total volume of oranges available for shipment in that district) and the total quantity of oranges grown in such prorate district fixed by the Secretary as the toal quantity of oranges which may be handled during such week.

Sections 907.112 and 908.112 of the administrative rules and regulations of the orders currently provide that all handling of navel and Valencia oranges, other than shipments by rail car, must be accompanied by N.O.A.C./V.O.A.C. Forms No. 8, which are Certificates of Assignment of Allotment covering each quantity of oranges so handled. These forms contain, among other information, proof of shipment by truck of such oranges.

These certificates are used by the Committees' field staff to verify daily reports filed by handlers and thereby to ascertain compliance with volume regulations. These reports provide the Committees with the information required to successfully conduct audits and compile data during an investigation of possible violations of such regulations.

Presently, similar data is not available for rail car shipments. When the above rules were put into effect, handler reports of rail shipments were unnecessary as the U.S. Department of Agriculture's Marketing Field Office in California provided this data to the Committees after reviewing railroad manifests and recording the necessary information. The Committees later took over this task. However, railroad companies no longer provide this documentation.

The Committees need documentation to substantiate shipments by rail, as currently provided for truck shipments.

While daily manifest reports (N.O.A.C./V.O.A.C. Forms No. 3), which are submitted to the Committees within 24 hours after shipment is made by a handler, do list rail shipments, these forms provide no documentation as to when the rail shipments actually occurred. Handlers are also required to file with the Committees, no later than 10 days following bulk rail shipments, information satisfactory to the Committees which substantiates and shows the derivation of the amount of equivalent cartons in the shipment (the number of 38.5 pound cartons shipped). However, a handler could overship a weekly allotment by not reporting a rail shipment until a later week and not be charged with the overshipment. A handler could also, in a week when such handler undershipped a weekly allotment, report a previously shipped rail shipment rather than forfeit or attempt to loan the allotment. Allotment which is not offered for loan and not forfeited is creditable against overshipments of other handlers. Thus, such misreporting could be inequitable to those handlers. Inclusion of a signed bill of lading or other documentation acceptable to the Committees with the daily manifest report will provide verification of such shipments.

The amendments to §§ 907.141 and 908.141 will add a requirement that handlers furnish a signed bill of lading or other documentation acceptable to the Committees for each rail shipment to accompany the daily manifest report. The changes will apply to all handlers. However, these changes will not place a burden on handlers as the documentation is already available to handlers.

Based on available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection provisions that are included in §§ 907.141 and 908.141 of this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0116 and 0581–0121, respectively.

This action revised §§ 907.141 and 908.141 and is based on unanimous recommendations of the Committees and other information. A proposed rule revising §§ 907.141 and 908.141 was published in the February 8, 1988, issue of the **Federal Register** (53 FR 3600). Comments on the proposed rule were invited from interested persons until March 9, 1988. No comments were received.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing agreements and orders, Navels, Oranges, and Valencia.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are proposed to be amended as follows:

Note.—These sections will appear in the Code of Federal Regulations.

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

2. Section 907.141 is revised to read as follows:

§ 907.141 Manifest reports.

(a) Within 24 hours after shipment is made by a handler, the handler shall submit to the committee, on N.O.A.C. Form No. 3, a manifest report of all oranges so shipped. Such report shall show the rail car number or the serial number of the Certificate of Assignment of Allotment for each shipment, together with the quantity by sizes per carton, of each shipment made within the United States or to Canada, or to Alaska. If the shipment was made under a size regulation and was covered by an exemption certificate, the certificate number shall also be shown. All manifest reports shall be certified by the handler to the United States Department of Agriculture and to the Navel Orange Administrative Committee as to the correctness of the information shown thereon.

(b) Each handler shall submit to the committee a signed bill of lading or other documentation satisfactory to the committee which substantiates each rail car shipment. This documentation shall accompany N.O.A.C. Form No. 3, a daily manifest report, and shall be submitted within 24 hours after shipment is made by the handler.

(c) If the shipment was by rail and contained oranges not packed in cartons or in bags, the handler shall file with the committee, no later than 10 days following the shipment, information satisfactory to the committee which substantiates, and which shows the derivation of the amount of equivalent cartons, by sizes, contained in the shipment and reported on the manifest report.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

3. Section 908.141 is revised to read as follows:

§ 908.141 Manifest reports.

(a) Within 24 hours after shipment is made by a handler, the handler shall submit to the committee, on V.O.A.C. Form No. 3, a manifest report of all oranges so shipped. Such report shall show the rail car number or the serial number of the Certificate of Assignment of Allotment for each shipment, together with the quantity by sizes per carton, of each shipment made within the United States or to Canada, or to Alaska. If the shipment was made under a size regulation and was covered by an exemption certificate, the certificate number shall also be shown. All manifest reports shall be certified by the handler to the United States Department of Agriculture and to the Valencia Orange Administrative Committee as to the correctness of the information shown thereon.

(b) Each handler shall submit to the committee a signed bill of lading or other documentation satisfactory to the committee which substantiates each rail car shipment. This documentation shall accompany V.O.A.C. Form No. 3, a daily manifest report, and shall be submitted within 24 hours after shipment is made by the handler.

(c) If the shipment was by rail and contained oranges not packed in cartons or in bags, the handler shall file with the committee, no later than 10 days following the shipment, information satisfactory to the committee which substantiates, and which shows the derivation of the amount of equivalent cartons, by sizes, contained in the shipment and reported on the manifest report.

Dated: April 11, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–8232, Filed 4–13–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 929

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Amendments to the Administrative Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the administrative rules and regulations of the cranberry marketing order. The changes will: (1) Require handlers to file inventory reports at earlier dates and add a fourth reporting date; (2) increase the total quantity of cranberries exempt from program assessments from 75 to not more than 300 barrels per year; and (3) delete portions of applicable sections that currently contain the Cranberry Marketing Committee's (CMC) old office address. The CMC is the agency responsible for local administration of the cranberry marketing order.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–2491.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 929 (7 CFR Part 929), as amended, regulating the handling of cranberries grown in 10 states. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issues thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 31 handlers of cranberries subject to regulation under the cranberry marketing order, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This final rule amends the administrative rules and regulations of the cranberry marketing order. The changes will: (1) Require handlers to file inventory reports at earlier dates and add a fourth reporting date; (2) increase the total quantity of cranberries exempt from program assessments from 75 to not more than 300 barrels per year; and (3) delete portions of applicable sections that currently contain the CMC's old office address.

The first change will require handlers to file handler inventory reports five days earlier than currently required, and will add a fourth reporting period with a September 5 deadline. Currently, handlers are required to file such reports no later than the 10th day of February, May, and August of each fiscal period. The change will require handlers to file such reports no later than the 5th day of the above mentioned months and add a fourth reporting period with a September 5 deadline. The impact of this regulation on handlers will not be significant. This action will simply require these reports to be filed earlier and at one additional date and any potential costs to handlers would appear to be significantly offset when compared to the potential benefits to the industry. These reports contain important information essential to the CMC in formulating marketing policies and recommendations on marketable quantity regulations and base allotment percentages. The CMC management staff needs more time to compile and analyze the information before distribution at CMC meetings, and this action will allow the CMC that additional time.

The second change will increase the minimum handling exemption from 75 to not more than 300 barrels per year. This change will relieve handlers of certain marketing order requirements by not requiring them to pay assessments if they handle not more than 300 barrels of cranberries per year. This change will also exempt handlers who handle not more than 300 barrels of cranberries per year from the set aside provisions of the order. These provisions have not been used since 1972. The CMC reports that it is costly and burdensome to collect assessments on such small shipments of cranberries. These handlers will still have to file receipt, inventory, and handling reports to the CMC, as required by the order. The impact of this action on affected handlers will be beneficial because the change will expand the minimum handling exemption while reducing the burden on the CMC.

The last change will delete the listing of the CMC's previous office address from applicable sections in the rules and regulations. The CMC office has relocated to Wareham, Massachusetts and its old address should not appear in the rules and regulations.

Notice of this action was published in the February 3, 1988, issue of the **Federal Register** (53 FR 3037). Comments on the proposed rule were invited from interested persons until March 4, 1988. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the informaiton collection provision contained in this final rule has been approved by the Office of Management and Budget (OMB) under OMB No. 0581–0103.

After consideration of all relevant matters presented, including the CMC's recommendations and other available information, it is found that the regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 929

Marketing agreements and orders, Cranberries, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Subpart—Rules and Regulations

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Note.—These sections will appear in the Code of Federal Regulations.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 929.101 is revised to read as follows:

§ 929.101 Minimum exemption.

The requirements of § 929.41 *Assessments* and § 929.54 *Withholding* shall not apply to any handler in a fiscal year during which the handler handles not more than a total of 300 barrels of cranberries.

3. Section 929.105 is revised to read as follows:

§ 929.105 Reporting.

(a) Each report required to be filed with the committee pursuant to §§ 929.6 and 929.48 shall be mailed to the committee office or delivered to that office. If the report is mailed, it shall be deemed filed when postmarked.

(b) Certified reports shall be filed with the committee, on a form provided by the committee, by each handler not later than the 5th day of February, May, and August of each fiscal period and the 5th day of September of the succeeding fiscal period showing: (1) The total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled from the beginning of the reporting period indicated through January 31, April 30, July 31, and August 31 respectively, and (2) the respective quantities of cranberries and cranberry products held by the handler on February 1, May 1, August 1, and August 31 of each fiscal period.

4. Section 929.160 is amended by revising paragraph (c) to read as follows:

§ 929.160 Public member eligibility requirements and nomination procedures.

* * * * *

(c) Names of candidates together with evidence of qualification for public membership on the Cranberry Marketing Committee shall be submitted to the committee at its business office.

* * * * *

Dated: April 11, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–8230 Filed 4–13–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

Expenses and Assessment Rate for California Almond Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1987–88 marketing year under Marketing Order No. 981 for California almonds. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1987, through June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–2491.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 105 handlers of almonds subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action revises § 981.336 under Marketing Agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California. Section 981.336 was established by a final rule published in the **Federal Register** December 1, 1987, (52 FR 45611). Section 981.336 currently states that an assessment rate for the crop year ending June 30, 1988, payable by each handler, shall be established in accordance with § 981.81 of the order, less any amount credited pursuant to § 981.41, but not to exceed 2.5 cents per pound of almonds (kernelweight basis).

Section 981.41 provides that the Almond Board of California (Board) may give handlers credit against their assessment obligations for their own direct expenditures for authorized marketing promotion, including paid advertising activities. Thus, § 981.336 has already established the maximum amount of 1987–88 crop year handler assessments that may be credited at 2.5 cents per pound of almonds (kernelweight basis).

This action revises § 981.336 to authorize Board expenses for the crop year ending June 30, 1988, of $15,995,334 and establish an assessment rate for that crop year of 2.8 cents per pound (kernelweight basis), while retaining the 2.5 cents per pound creditable rate.

The 2.8 cent per pound 1987–88 assessment rate compares with a 1986–87 assessment rate of 2.6 cents per pound. While the 2.5 cents per pound creditable rate is the same as the 1986–87 rate, the .3 cent per pound non-creditable portion of the total assessment, which handlers must pay to the Board, is higher than the .1 cent per pound 1986–87 rate. The 1986–87 rate was exceptionally low due to an accumulation of reserve funds by the Board. Such reserve funds were used for Board expenses in 1986–87, in lieu of a higher handler assessment rate.

Expenses of $15,995,334 for 1987–88 compare with 1986–87 budgeted expenses of $7,400,088. Budget categories for 1987–88 are $676,097 for administrative expenses, $256,837 for production research, $758,300 for public relations, and $54,100 for the 1988 crop estimate. Comparable actual expenditures for the 1986–87 crop year were $411,597, $185,734, $349,835, and $51,600, respectively. The remaining $14,250,000 of proposed 1987–88 expenses is the estimated amount which handlers will spend on their own marketing promotion activities based on a projected 1987–88 marketable production of 570,000,000 kernelweight pounds and assumes that all handlers receive full credit against the 2.5 cent per pound creditable assessment obligation. For the 1986–87 crop year,

$6,100,000 was budgeted for handler marketing promotion activities based on a projected marketable production of 244,000,000 kernelweight pounds. Actual expenditures for 1986–87 handler marketing promotion activities were $5,550,996. The Board believes that the much larger 1987–88 crop will result in proportionately higher handler expenditures for marketing promotion. These additional expenditures are deemed appropriate in view of the estimated size of the 1987–88 crop.

Income for 1987–88 is expected to total $1,606,500, including assessments of $1,551,500, debt collection of $50,000, and interest income of $5,000. Most of the remainder of the $15,995,334 is expected to be offset by handlers' creditable advertising and promotion activities. Handlers who do not receive credit for their own advertising and promotion activities would be required to pay the creditable portion of the assessment to the Board.

Marketing Order No. 981 requires that the assessment rate for a particular marketing year shall apply to all almonds received by handlers for their own accounts from the beginning of such year. An annual budget of expenses is prepared by the Board, which was established under the order for the purpose of administering the program, and submitted to the Department of Agriculture for approval. Members of the Board are handlers and producers of California almonds. This is appropriate because they are familiar with the Board's needs and with the costs for goods, services, and personnel in their area and are, thus, in a position to formulate an appropriate budget recommendation. The budget is formulated and discussed in public meetings; thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by the number of kernelweight pounds of almonds expected to be received by handlers for their own accounts. That rate is applied to actual receipts to produce income sufficient to pay the Board's expected expenses.

While this action may impose some additional costs on handlers, including small entities, the costs will be in the form of uniform assessments on all handlers which will not have a significant economic impact on the entities involved. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order.

Based on the above, the Administrator of the Agricultural Marketing Service has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the **Federal Register** on January 7, 1988 (53 FR 415). Written comments were invited from interested persons until January 19, 1988. Comments were received from Brian C. Leighton and Sharon Wiggin for Wiggin Farms and Asa & Edith Wiggins, Inc.

Mr. Leighton requested in his comment that the non-creditable portion of the 1987–88 assessment rate be established at .1 cent or .15 cents per pound rather than the .3 cents per pound established by this final rule. The non-creditable portion of the assessment is used by the Board to pay its administrative expenses, production research and crop estimate projects and generic public relations program. The Board has budgeted $1,745,334 for these expenses for the 1987–88 crop year, and the Department believes that these expenses are justified. Based on the projected 1987 marketable crop production of 570,000,000 pounds, a .3 cent per pound non-creditable assessment rate would provide the Board with income of $1,710,000. This amount, along with other income from several minor sources, should be sufficient to meet Board expenses. A .15 cent per pound or lower rate, however, would fall far short of the amount required for anticipated Board expenses.

Mr. Leighton objects to the fact that the budgeted level of expenses for 1987–88 production research activities are above actual expenditures for the previous year. However, budgeted levels for 1987–88, at $256,837, are actually $8,651 less than the $265,488 budgeted for production research in the 1986–87 crop year. Mr. Leighton also states that no justification has been provided by the Board for spending $256,837 on production research for almonds. However, the Board submitted to the Department detailed proposals for 20 production research projects designed to improve horticultural practices or to research disease and pest problems affecting the California almond industry. The Department believes that these projects, conducted primarily by researchers from the University of California, are in conformance with both the order and the Act.

Another concern Mr. Leighton addresses in his comment is the level of funds budgeted for generic public relations. This item is budgeted at $758,300 for the 1987–88 crop year, compared with 1986–87 actual expenses of $349,835. Budgeted expenses for 1986–87 were $458,000. Mr. Leighton states that he sees no justification for the higher level of expenses for generic public relations in the 1987–88 crop year. However, the Board submitted a detailed proposal for a $758,300 generic promotion program designed to increase the domestic consumption of California almonds by developing consumer, food service, and industrial markets. This program is conducted by a professional consumer relations agency, and the Department finds that this project is in conformance with both the order and the Act. The Department also believes that the higher level of expenditures for consumer relations is warranted due to the record large 1987–88 almond crop.

The commenter requests in his comment that no creditable advertising assessment be established for the 1987–88 crop year. The commenter believes that such an assessment would require handlers to advertise a branded product when they may not market almonds under their own brand name. However, handlers may receive credit against their advertising assessments for activities other than brand advertising. Handlers may receive credit for generic advertising and for the following three types of marketing promotion expenditures: (1) The distribution of sample packages of almonds to charitable and educational outlets, (2) the purchase of promotional materials from the Board, and (3) certain costs related to mail order promotions. Alternatively, handlers may receive 150 percent credit against their advertising assessments for direct payments to the Board, for use by the Board to pay its own generic public relations program. The commenter objects that this money paid to the Board is not spent specifically on advertising, but the Board believes that its generic public relations program provides an effective complement to individual handler advertising.

The commenter believes that the creditable advertising assessment only benefits handlers who have a brand name. However, the Department believes that handler brand advertising, as well as handler generic advertising and marketing promotion activities, benefits all handlers and growers by increasing demand for all almonds.

Mr. Leighton points out paragraph 981.41(d)(3) of the order which states that "No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity." Mr. Leighton states that neither the Board's generic public relations program nor handler

creditable advertising and promotion are in conformance with this section of the order.

Section 981.41(d) of the order was added in 1972 (37 FR 3984) to provide the Board with general guidelines for its promotion and advertising activities. Advertising and other forms of promotion have been used as an effective means to benefit handlers and growers by increasing demand for many commodities under the Agricultural Marketing Agreement Act of 1937 and various research and promotion programs under separate authorities. The Board, composed of growers and handlers, many of whom are competitors, has recommended the expenditure of sums of money for such activities with a reasonable expectation of improved returns to producers.

In fact, the Board's 1987–88 generic promotion program is designed to increase the domestic consumption of almonds by developing consumer, food service, and industrial markets. The objective of the consumer program is to build and maintain positive consumer attitudes towards almonds, encourage present users of almonds to broaden the scope of their usage, and encourage occasional almond users to increase their almond usage. The objective of the food service program is to increase the use of almonds in school lunch menus. The objective of the industrial program is to increase the use of almonds and almond products by industrial manufacturers, increase awareness of the high quality of California almonds, and communicate the product's nutritional advantages.

Mr. Leighton objects to the requirement that reserve almonds, as well as salable almonds, be assessed. As stated previously, the order requires that the assessment rate for a particular marketing year shall apply to all almonds received by handlers for their own accounts. All almonds are assessed whether salable or reserve. Reserve almonds may be disposed of pursuant to the provisions of the order and regulations.

Finally, Mr. Leighton objects to issuing the notice of proposed rulemaking on this action in January. The commenter objects to the application of assessments for the entire crop year. The crop year begins on July 1 and ends on June 30. However, the order does provide that the assessment rate as established for the crop year shall apply to all almonds received by handlers for their own accounts.

Commenter Sharon Wiggin opposes the increase in the non-creditable portion of the assessment to .3 cents per pound from last year's rate of .1 cent per pound. This commenter also states that advertising is a useless expense for Wiggin Farms, the handler and producer which the commenter represents.

The commenter believes that the increase in the non-creditable assessment will ultimately be passed back to the grower. While neither the order nor the rules and regulations established under the order regulate price negotiations between handlers and growers, activities engaged in under marketing orders, including advertising and promotion, are intended to improve returns to growers. Even though handlers may pass the cost of some of these activities back to their growers, growers would be expected to receive benefits from such activities in excess of any such costs.

The commenter also claims that the current creditable advertising rules and regulations established under the order are too restrictive and should be broadened to include a wider range of marketing activities. These rules have been expanded several times in recent years and may be amended in the future, if deemed appropriate.

Therefore, for the reasons stated, the comments of Brian C. Leighton and Sharon Wiggin are denied.

After consideration of all relevant matter presented, including the Board's recommendations, the comments received, and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the Board needs to have sufficient funds to pay their expenses, which are incurred on a continuous basis. The expenses and assessment rate established by this final rule apply to the entire 1987–88 crop year, which began July 1, 1987. In addition, handlers are aware of this action, which was recommended by the Board at a public meeting. Therefore, good cause is found for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, and California.

For the reasons set forth in the preamble, 7 CFR 981.336 is revised as follows:

PART 981—[AMENDED]

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.336 is revised to read as follows [*the following section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations*]:

Almonds Grown in California

§ 981.336 Expenses and assessment rate.

Expenses of $15,995,334 by the Almond Board of California are authorized for the crop year ending June 30, 1988. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at 2.8 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to § 981.41, but not to exceed 2.5 cents per pound of almonds (kernelweight basis).

Dated: April 11, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–8231 Filed 4–13–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–21–AD; Amdt. 30–5895]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires operational testing of fuel boost pump bypass valves. This amendment is prompted by the determination that small amounts of water in the valves may freeze and prevent valve operation. This condition, if not corrected, could result in loss of both engines in the event of an electrical power failure.

EFFECTIVE DATE: May 4, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. C.D. Engebretson, Propulsion

Branch, ANM-140S; telephone (206) 431-1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: During the course of an investigation into two separate incidents of unexplained engine flameouts on Boeing Model 737 airplanes in cruise conditions, it was determined that small accumulations of water in the fuel boost pump bypass valve may freeze, preventing fuel flow to the engine while on suction feed (boost pump off). The present design of the fuel system is such that water in the fuel feed line is able to collect at the bypass values. Since this water can be loaded as a contaminant in fuel, and since both main tanks are normally fueled simultaneously from the same source, both tanks may be expected to be contaminated. This condition is normally undetectable. In the event of an alternating current electrical failure at altitude, power to all boost pumps could be lost, causing both engines to flame out due to fuel starvation resulting from the frozen bypass valves. It has been determined that the fuel boost pump bypass valves of the Model 757 are similar to the design of the Model 737 and are subject to the same failure mode.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-28A0017, dated February 11, 1988, which describes procedures to operationally test and purge the fuel boost pump bypass line of water on a scheduled basis.

Since this condition is likely to exist or develop on other airplanes of similar type design, this AD requires repetitive operational tests of the bypass valve in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a) 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, listed in Boeing Alert Service Bulletin 757-28A0017, dated February 11, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine flame out due to boost pump bypass valve freezing, accomplish the following:

A. Prior to accumulation of 150 flight hours after the effective date of this AD, unless previously accomplished within the last 150 flight hours, and thereafter at intervals not to exceed 300 flight hours, perform an operational test of the fuel boost pump bypass valves in accordance with Boeing Alert Service Bulletin 757-28A0017, dated February 11, 1988, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Modification of fuel boost pump bypass valve in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, will constitute terminating action for the repetitive tests required by paragraph A., above.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 4, 1988.

Issued in Seattle, Washington, on April 6, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-8211 Filed 4-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25584; Amdt. No. 1371]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on April 1, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption Of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNVA; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 30, 1988*

Alliance, NE—Alliance Muni, VOR RWY 12, Amdt. 1
Alliance, NE—Alliance Muni, VOR RWY 30, Amdt. 1
Alliance, NE—Alliance Muni, NDB RWY 30, Amdt. 7
Norfolk, NE—Karl Stefan Memorial, VOR RWY 1, Amdt. 5
Norfolk, NE—Karl Stefan Memorial, VOR RWY 13, Amdt. 5
Norfolk, NE—Karl Stefan Memorial, VOR RWY 19, Amdt. 5
Norfolk, NE—Karl Stefan Memorial, VOR RWY 31, Amdt. 5
Norfolk, NE—Karl Stefan Memorial, ILS RWY 1, Amdt. 2
Charlotte, NC—Charlotte/Douglas Intl, LOC BC RWY 23, Amdt. 7
Charlotte, NC—Charlotte/Douglas Intl, NDB RWY 5, Amdt. 31
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 5, Amdt. 33
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36L, Amdt. 11
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Amdt. 3
Southern Pines, NC—Moore County VOR–A, Amdt. 2

** * * Effective June 2, 1988*

Lafayette, IN—Aretz, VOR–C, Amdt. 1
Logansport, IN—Logansport Muni, VOR–A, Amdt. 6
Peru, IN—Peru Muni, VOR RWY 1, Amdt. 4
Bangor, ME—Bangor Intl, RADAR–1, Amdt. 3
Muskegon, MI—Muskegon County, RADAR–1, Amdt. 12
Muskegon, MI—Muskegon County, ILS RWY 24, Amdt. 1
Petersburg, MI—Lada, VOR–A, Amdt. 5, CANCELLED
Lakewood, NJ—Lakewood, VOR RWY 6, Amdt. 3
Carrollton, OH—Carroll County-Tolson, NDB RWY 25, Amdt. 5

** * * Effective May 5, 1988*

Burlington, CO—Kit Carson County, NDB RWY 15, Orig.
Denver, CO—Jeffco, ILS RWY 29R, Amdt. 11
Grand Junction, CO—Walker Field, VOR RWY 11, Orig.
Atlanta, GA—Charlie Brown County, RNAV RWY 26L Amdt. 1, CANCELLED
Atlanta, GA—Fulton County Airport-Brown Field, NDB RWY 8, Amdt. 2

Atlanta, GA—Fulton County Airport-Brown Field, ILS RWY 8, Amdt. 13
Lihue, HI—Lihue, VOR/DME or TACAN RWY 21, Amdt. 2
Portland, OR—Portland Intl, VOR-A Amdt. 8
Portland, OR—Portland Intl, VOR-B, Orig.
Portland, OR—Portland Intl, VOR RWY, 28R Orig.
Portland, OR—Portland Intl, LOC BC RWY 10L, Amdt. 12
Portland, OR—Portland Intl, NDB RWY 28R, Amdt. 9
Portland, OR—Portland Intl, ILS RWY 10R, Amdt. 28
Portland, OR—Portland Intl, ILS RWY 28R, Amdt. 11
Vancouver, WA—Pearson Airpark, LDA BC RWY 8, Amdt. 3

** * * Effective March 29, 1988*

Worcester, MA—Worcester Muni, NDB RWY 11, Amdt. 17
Worcester, MA—Worcester Muni, NDB RWY 29, Amdt. 9
Worcester, MA—Worcester Muni, ILS RWY 11, Amdt. 18

** * * Effective March 25, 1988*

Boston, MA—General Edward Lawrence Logan Intl, VOR/DME RWY 33L, Orig.

[FR Doc. 88-8210 Filed 4-13-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9159]

The B.F. Goodrich Company et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This Final Order requires Goodrich, a corporation with its principal place of business in Akron, Ohio, to divest the vinyl cloride monomer (VCM) plant, in La Porte, Texas, at no mimimum price, to a Commission-approved acquirer and must also provide all supporting material to the acquirer. Diamond Shamrock Chemicals Company is prohibited from interfering with the divestiture and, for five years, must continue to supply all utilities, services, and supplies to the acquirer. In addition, Goodrich must, for 10 years, receive FTC approval before acquiring any interest in any producer of VCM located in the United States. The Commission also dismissed part of the complaint concerning the polyvinyl chloride (PVC) market.

DATES: Complaint issued January 4, 1982. Final Order issued March 15, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Rhett Krulla, FTC/S-3302, Washington, DC 20580. (202) 326-2608.

SUPPLEMENTARY INFORMATION: In the Matter of the B.F. Goodrich Company, a corporation, Diamond Shamrock Chemicals Company, a corporation, and Diamond Shamrock Plastics Corporation, a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: Section 13.5 Acquiring corporate stock or assets; S.13.5-20 Federal Trade Commission Act. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533-45 Maintain records; S.13.533-45(k) Records, in general; S.13.533-50 Maintain means of communication.

List of Subjects in 16 CFR Part 13

Plastics, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Before Federal Trade Commission

[Docket No. 9159]

Final Order

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the matter of The B.F. Goodrich Company a corporation, Diamond Shamrock Chemicals Company, a corporation, and Diamond Shamrock Plastics Corporation, a corporation.

This matter has been heard by the Commission upon the appeal of complaint counsel from the initial decision and upon briefs and oral argument in support of and in opposition to the appeal. For the reasons stated in the accompanying opinion, the Commission has determined to deny the appeal in part and to grant the appeal in part. Accordingly,

It is ordered, that the findings of fact and initial decision of the Administrative Law Judge be adopted insofar as not inconsistent with the findings of fact and conclusions contained in the accompanying opinion.

It is further ordered, that the following order be and the same hereby is entered:

[1] Copies of the Complaint, Initial Decision, Opinions etc. are available from the Commission's Public Reference Branch, H-130, 6th St.& Pa. Ave., NW., Washington, DC 20580. (202) 326-2222.

I

Definitions

It is ordered that for purposes of this Order the following definitions shall apply:

A. "Goodrich" means The B.F. Goodrich Company, a corporation organized under the laws of New York with its principal place of business in Akron, Ohio, and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns.

B. "Diamond Shamrock" means Diamond Shamrock Chemicals Company, a corporation organized under the laws of Delaware with its principal place of business in Dallas, Texas, and its directors, officers, agents, employees, subsidiaries, divisions, affiliates, successors, and assigns.

C. "La Porte VCM Plant" means the VCM manufacturing facility located at La Porte, Texas, and all assets, titles, properties, interests, rights and privileges, tangible and intangible, related to the VCM business, that were acquired by Goodrich from Diamond Shamrock pursuant to the January 4, 1982, agreement between Goodrich and Diamond Shamrock, together with all improvements thereto.

D. "VCM" means vinyl chloride monomer, a gaseous, reactive, acyclic intermediate chemical, with chemical identity $CH_2=CHCl$, also called chloroethylene or monochloroethylene.

II

It is ordered that within twelve (12) months from the date this Order becomes final, Goodrich shall divest, absolutely and in good faith, at no minimum price, the La Porte VCM Plant. The purpose of the divestiture is to establish the La Porte VCM Plant as a viable competitor in VCM, by insuring its continuation as an ongoing, viable enterprise in the VCM industry; and to remedy the lessening of competition resulting from the acquisition of the La Porte VCM Plant by Goodrich. The divestiture shall be made only to an acquirer or acquirers, and only in a manner, that receives the prior approval of the Federal Trade Commission.

Pending divestiture, Goodrich shall take all measures necessary to maintain the La Porte VCM Plant in its present condition and to prevent any deterioration, except for normal wear and tear, of any part of the La Porte VCM Plant, so as not to impair the La Porte VCM Plant's present operating viability or market value.

III

It is further ordered that at the time of the divestiture required by this Order, Goodrich shall provide to the acquirer of the La Porte VCM Plant, on a nonexclusive basis, all VCM technology (including patent licenses and know-how) used by Goodrich, or developed by Goodrich, for use in the La Porte VCM Plant; and

For a period of one (1) year following the divestiture required by this Order, Goodrich shall provide the acquirer of the La Porte VCM Plant, if the acquirer so requests, such additional know-how as may reasonally be required to enable such acquirer to manufacture and sell VCM. Goodrich shall charge the acquirer no more than its own costs for providing such additional know-how.

IV

It is further ordered that at the time of the divestiture required by this Order, Goodrich shall assign to the acquirer of the La Porte VCM Plant all chlorine and ethylene feedstock supply agreements; all VCM supply, sales, toll, or exchange agreements; and all VCM customer records and files relating to VCM produced in (or supplied by Goodrich at any time since January 1, 1985 from) the La Porte VCM Plant.

V

It is further ordered that if Goodrich has not divested the La Porte VCM Plant within the twelve-month period provided in Paragraph II of this Order, the Federal Trade Commission may appoint a trustee to effect the divestiture. The trustee shall be a person with experience and expertise in acquisitions and divestitures. Neither the appointment of a trustee nor a Commission decision not to appoint a trustee under this Paragraph V of the Order shall preclude the Commission from seeking civil penalties and other relief available to it, including a court-appointed trustee, for any failure by Goodrich to comply with this Order.

Any trustee appointed by the Commission pursuant to this Paragraph V shall have the following powers, authority, duties, and responsibilities:

A. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the La Porte VCM Plant. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission.

B. The trustee shall have full and complete access to the personnel, books, records and facilities of the La Porte VCM Plant, and Goodrich shall develop such financial or other information relevant to the La Porte VCM Plant as the trustee may reasonably request. Goodrich and Diamond Shamrock shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Goodrich or Diamond Shamrock shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission.

C. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with this Order's absolute and unconditional obligation to divest at no minimum price, and with the purposes of the divestiture as stated in Paragraph II of this Order, subject to the prior approval of the Commission.

D. The trustee shall serve, without bond or other security, at the cost and expense of Goodrich on such reasonable and customary terms and conditions as the Commission may set. The trustee shall shall have authority to retain, at the cost and expense of Goodrich, such consultants, attorneys, investment bankers, business brokers, accountants, appraisers, and other representatives and assistants as are reasonably necessary to assist in the divestiture. The trustee shall account for all monies derived from the divestiture and for all expenses incurred. After approval by the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Goodrich, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the La Porte VCM Plant.

E. Goodrich shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order, unless the Commission determines that such losses, claims, damages, or liabilities arose out of the misfeasance, gross negligence, or the willful or wanton acts or bad faith of the trustee.

F. Promptly upon appointment of the trustee and subject to the approval of the Federal Trade Commission, Goodrich shall, subject to the Federal Trade Commission's prior approval and consistent with provisions of this Order, transfer to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

G. If the trustee ceases to act or fails to act diligently, the Commission may appoint a substitute trustee.

H. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

I. The trustee shall have no obligation or authority to operate or maintain the La Porte VCM Plant.

J. The trustee shall report in writing to Goodrich and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

VI

It is further ordered that Diamond Shamrock shall take no action that may interfere with the divestiture required by this Order and shall assert no right or claim, arising by contract or otherwise, against the stock or assets of the La Porte VCM Plant that may impair its operating abilities or market value; and

For a period of five (5) years from the date this Order becomes final, Diamond Shamrock shall:

A. Provide to the La Porte VCM Plant all utilities, services, and feedstock supplies (including chlorine or ethylene) requested for operation of the La Porte VCM Plant, to the same extent and on the same terms and conditions that such utilities, services or feedstock supplies were supplied by Diamond Shamrock to Goodrich at any time after January 1, 1982; and

B. Make available to the La Porte VCM Plant without charge, for its use in connection with any purchase, toll, sale, or exchange incident to the ordinary operation of a VCM plant all pipelines for transporting VCM, chlorine, or ethylene, that are connected to the La Porte VCM Plant and that are owned by Diamond Shamrock.

VII

It is further ordered that for a period of ten (10) years from the date this Order becomes final, Goodrich shall not directly or indirectly acquire—other than the acquisition of manufactured product in the ordinary course of business—all or any part of the stock or assets of, or any interest in, any producer of VCM located in the United States without the prior approval of the Federal Trade Commission.

VIII

It is further ordered that Goodrich shall, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraph II of this Order, submit in writing to the Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with that provision. Such compliance reports shall include, among other things that may be required from time to time, a full description of all contacts and negotiations relating to the divestiture of the La Porte VCM Plant, including the name and address of all parties contacted, copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture; and

Goodrich shall submit such further written reports of its compliance as the staff of the Commission may from time to time request in writing.

IX

It is further ordered that any reacquisition of all or any part of the La Porte VCM Plant by Diamond Shamrock from Goodrich shall be subject to the provisions of this Order; and if Diamond Shamrock reacquires the La Porte VCM Plant, it shall:

A. For a period of three years following such reacquisition, maintain the marketability and viability of any such reacquired assets, consistent with Paragraph II of this Order; and

B. For a period of three years following such reacquisition, obtain the prior approval of the Commission before selling all or any part of such reacquired assets, other than the sale of manufactured VCM in the ordinary course of business.

Diamond shall not, for a period of ten (10) years from the date of any such reacquisition, convey any such reacquired assets or any part thereof to Goodrich.

X

It is further ordered that Goodrich and Diamond Shamrock, upon written request and on reasonable notice, for the purpose of securing compliance with this Order, and subject to any legally recognized privilege, shall permit duly authorized representatives of the Commission or of the Director of the Bureau of Competition:

A. Reasonable access during the office hours of Goodrich or Diamond Shamrock, which may have counsel present, to inspect and copy books, ledgers, accounts, correspondence, memoranda, reports, and other records and documents in the possession or control of Goodrich or Diamond Shamrock that relate to any matter contained in this Order; and

B. Subject to the reasonable convenience of Goodrich or Diamond Shamrock, an opportunity to interview officers or employees of Goodrich or Diamond Shamrock, who may have counsel present, regarding such matters.

XI

It is further ordered that Goodrich and Diamond Shamrock shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed corporate change, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation, which may affect compliance with the obligations arising out of this Order.

By the Commission, Chairman Oliver, Commissioner Bailey, and Commissioner Azcuenaga concurring in part and dissenting in part.

Issued: March 15, 1988.

Benjamin I. Berman,

Acting Secretary.

Opinion of the Commission

By Calvani, Commissioner:

This case concerns an acquisition affecting the manufacture of polyvinyl chloride ("PVC") and vinyl chloride monomer ("VCM"). PVC is a thermoplastic resin that, when combined with other ingredients, can be used to produce a wide variety of plastic products, ranging from irrigation pipe to phonograph records.[1] VCM is a gaseous chemical that is an essential and primary input needed to manufacture PVC resin. This case concerns an acquisition affecting the manufacture of both products. Respondent B.F. Goodrich ("Goodrich") is a large New York corporation, headquartered in Akron, Ohio, that manufactures a wide variety of chemicals, plastics, rubber and other products worldwide. In calendar 1980, Goodrich had net sales of $3.08 billion, net income of $61.7 million, and total assets valued at $2.2 billion.[2] Respondent Diamond Shamrock ("Diamond") is a Delaware corporation, headquartered in Dallas, Texas, whose operations include natural gas and crude oil exploration and production; petroleum refining and marketing; coal, chemicals and plastics production; and technology development. In calendar 1980, Diamond Shamrock had revenues of $3.143 billion, net income of $201 million, and total assets valued at $2.8 billion. IDF 4.

In January 1982 Goodrich acquired Diamond's largest PVC plant, its VCM plant, and certain other assets for $125 million. IDF 11 *in camera*. The Federal Trade Commission simultaneously issued the administrative complaint in this matter.[3] The complaint alleges that the acquisition violated section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. More particularly, the complaint alleges that the acquisition would eliminate actual competition between Goodrich and Diamond and increase concentration levels in two product markets: the bulk and suspension PVC market and the VCM market. Administrative Law Judge Howder dismissed the complaint with respect to both markets, because in his view "the record shows that competition among producers is ongoing, vigorous and intense." ID at 95.

As explained in detail below, the Commission has concluded that the acquisition may substantially lessen competition in the VCM market, but is unlikely to lessen competition substantially in the PVC market.

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[1] A thermoplastic resin becomes soft and malleable when heated, and therefore can be fabricated by applying heat and pressure. By contrast, thermosetting plastics do not return to a malleable state upon reheating.

[2] IDF 1. The following abbreviations are used in this opinion:

ID—initial decision page number

IDF—initial decision finding number

Tr.—transcript of testimony page number

CX—complaint counsel's exhibit number

CAB—complaint counsel's appeal brief

CRB—complaint counsel's reply brief

CPF—complaint counsel's proposed finding of fact number

CRF—complaint counsel's reply finding of fact number

RX—respondents' exhibit number

RAB—respondents' answering brief

RPF—respondents' proposed finding of fact number

RRF—respondents' reply finding of fact number

This opinion, and the opinions of Chairman Oliver and Commissioner Azcuenaga, contain some references to material in the *in camera* portion of the record. Pursuant to an order issued on February 8, 1988, the Commission has determined, without objection from the submitting parties, to place these references on the public record of this proceeding.

[3] PVC is currently the subject of another Commission proceeding. In April 1986 the Commission issued an administrative complaint challenging Occidental Petroleum's acquisition of two PVC plants from Tenneco Polymers. The Commission also sought a preliminary injunction against the transaction. The district court denied that application, but its decision was later vacated as moot. *FTC v. Occidental Petroleum Corp.*, 1986-1 Trade Cas. (CCH) ¶ 67,071 (D.D.C. April 29, 1986), *vacated as moot*, No. 86-5254 (D.C. Cir. Oct. 23, 1986).

Accordingly, the Commission affirms the decision of Judge Howder with respect to the PVC market, and reverses with respect to the VCM market.

Table of Contents

I. Statement of Facts

At the time of the acquisition, Goodrich operated bulk or suspension PVC facilities—with a total nameplate capacity of over one billion pounds per year—in Avon Lake, Ohio; Henry, Illinois; Long Beach, California; Louisville, Kentucky; Pedricktown, New Jersey; and Plaquemine, Louisiana. CX 4Z73. It also operated a VCM plant with a nameplate capacity of approximately one billion pounds per year in Calvert City, Kentucky. IDF 3 *in camera*. At the time of the acquisition, Diamond operated several bulk and suspension PVC facilities—with a total nameplate capacity of 590 million pounds per year—in Deer Park, Texas and Delaware City, Delaware. IDF 5 *in camera*. Its Deer Park facilities included several specialty PVC resin plants (plants numbers 1, 3, 4 and 4X), with a combined practical production capacity of 215 million pounds per year; one large commodity PVC resin plant (plant number 5), with a practical production capacity of 260 million pounds per year; and a powder compound plant, with a capacity of 152 million pounds per year. Diamond also operated a VCM facility with a nameplate capacity of one billion pounds per year at LaPorte, Texas, adjacent to its Deer Park facility.[4]

In July 1979 Goodrich announced that it intended to double its PVC capacity by 1986.[5] In 1980, it announced that it would execute that strategy by constructing a 1.6 billion pound per year VCM plant and a 1.1 billion pound year suspension PVC plant at Convent, Louisiana.[6] Goodrich privately described its plans in 1981 as a successful "preemptive" strategy designed to

> freeze the competition into inaction, thereby delaying expansions and forestalling new entrants into the business * * *. This preemptive strategy, reinforced by the 1980 recession, has been quite successful to date * * * No new expansions beyond 1983 have been announced by any competitor. New entries in PVC have been forestalled * * * We have also seen consolidation occurring within the industry * * * the Diamond Shamrock and Air Products PVC businesses are for sale. As a result of all of the above developments, as well as the industry perception of our commitment, we are in an excellent competitive position to move ahead with our plans.[7]

These developments helped Diamond to conclude that its plastics business would not satisfy new corporate financial targets; it also believed that selling the business would provide capital for expansion in other areas.[8] Diamond therefore organized its plastics business into a new subsidiary, Diamond Shamrock Plastics Corporation ("DSPC"). IDF 7. Several firms expressed interest, and between September 1980 and September 1981 Diamond negotiated most actively with [ ] firm. CPF 1.26 *in camera*. In August 1980 Diamond rejected a Goodrich proposal, in part because it believed that such an acquisition would present antitrust problems. However, Diamond subsequently changed its mind, and in August 1981 began negotiating actively with Goodrich.[9] Although Goodrich believed that Diamond duplicated rather than complemented its own PVC capabilities, with "only a suggestion of synergy," it viewed the acquisition as "an attractive defense against acquisition [of Diamond] by another PVC producer."[10]

In the course of their negotiations Goodrich and Diamond agreed that only Diamond's large commodity grade plant (number 5) would be directly transferred to Goodrich, while Diamond would retain the four Deer Park small reactor specialty PVC plants (numbers 1, 3, 4, and 4X) and operate them for Goodrich.[11] At a meeting on September 9, 1981, Goodrich and Diamond discussed the shutdown of Diamond's remaining plants, and tentatively agreed that the Delaware City plant would be shut down as soon as possible, while the remaining Deer Park plants would be operated for "at least a year."[12] In late September 1981, Diamond and Goodrich reached an agreement in principle on the acquisition. Goodrich Admission 297 (CX 4Z12). In January 1982, Goodrich acquired Diamond's Deer Park plant number 5, its VCM plant, and certain other assets for $125 million.[13] Goodrich

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[4] IDF 5–6 *in camera*; Goodrich Admissions 1, 15, 21, 23 (CX 4A, C–E); RX 320M, P; CX 11B *in camera*. The record indicates that Diamond continues to hold a fifty percent interest in a 220 million pound per year bulk PVC plant in Alberta, Canada. RX 320S–T.

[5] DiLiddo, Tr. 3335; CX 38C *in camera*; *see* CX 109D, Z4 *in camera*.

[6] DiLiddo, Tr. 3131, 3135–36, 3178–79; CX 8B; CX 38C *in camera*. A joint venture between Goodrich and Bechtel Petroleum was already constructing a chlor-alkali and ethylene dichloride complex at the same location; that facility was completed in 1981. CX 8B; Goodrich Admission 665 (CX 4Z62); DiLiddo, Tr. 3131; CX 38C *in camera*.

[7] CX 47B; *accord* CX 59D *in camera*; DiLiddo, Tr. 3170–74; CX 49R; CX 56A *in camera*; CX 57C–E *in camera*.

[8] CX 112G–H; CX 541F *in camera*; Diamond Admissions 294, 295, 297 (CX 6M); Becker, Tr. 1342–48; CX 401E; CX 402B; CX 403A–B.

[9] Schaefer, Tr. 1092–93, 1106–07; CX 295Z75–76 *in camera*; Arp, Tr. 3458, 3476.

[10] CX 34A *in camera*; *see* Klass, Tr. 4963 *in camera*. These statements suggest that the acquisition did not increase efficiency to a significant degree.

[11] CX 60A *in camera*; CX 197A *in camera*.

[12] CX 60A *in camera*. In a September 1981 internal memorandum, Goodrich outlined some of the terms of the transaction as follows: DS will operate DP small poly plant for BFG for two years with option to extend a third year. Upon 6 mos. notice BFG can terminate small poly operations. DS & BFG will jointly develop a shutdown plan.

CX 115C, H *in camera*. Respondents argue that this document was "a summary of the key points of the negotiation," rather than a description of the agreement, and that Goodrich and Diamond did not agree that Deer Park plants 1 through 4X would ultimately be shut down. RRF at 14–16, *citing* DiLiddo, Tr. 3198; Schaefer, Tr. 1183; Becker, Tr. 1357–58. However, the document is dated September 11, 1981, and Diamond and Goodrich reached an agreement in principle in late September. In any event, the Delaware City plant was subsequently sold to Ethyl Corporation, rather than shut down. *See* page 10, *infra*.

[13] IDF 10–11 *in camera*. The other assets Goodrich acquired included Diamond's suspension PVC production technology and formulations; its suspension PVC and powder compound inventories; its PVC and VCM railcars; its research and development resources; and various patents. IDF 12 *in camera*. They also included Diamond's Deer Park powder compound plant, which had been used to supply compounded PVC resin to PVC pipe producers. CX 452. As a part of the sales agreement, Diamond also agreed to supply ethylene and chlorine feedstocks to Goodrich—and to manufacture suspension PVC for Goodrich using Goodrich VCM—on an interim basis. IDF 13 *in camera*.

subsequently cancelled its plan to build a VCM plant at Convent, Louisiana, and wrote off the $27 million it had thus far invested in the project as a loss.[14]

Goodrich and Diamond believed that the sale of Deer Park plant number 5 to Goodrich effectively precluded the sale of plants numbers 1, 3, 4, and 4X to another firm, and that these plants would be closed within two years.[15] However, Diamond agreed to toll needed raw materials from Goodrich and use the plants to supply speciality grades of suspension PVC resin for resale by Goodrich.[16] As a result, Goodrich was able to assume responsibility for supplying specialty resins to Diamond's customers.[17] After Goodrich established itself as the supplier for these accounts, and Diamond dissolved its PVC marketing organization, Goodrich shifted the source of supply from plants 1, 3, 4, and 4X to one of its own plants. *See* CX 570B.

After the first year of the tolling arrangement, Goodrich determined to minimize Diamond's suspension PVC production as much as possible, but to continue to take all the suspension PVC Diamond produced until Diamond shut down the remaining Deer Park plants.[18] Goodrich perceived this strategy as

> the only option that keeps Diamond from being a disruptive force in the market place. Since they have no sales force, if we don't take their resin, they will be able to only sell the resin based on price and this could have a devastating effect on overall industry pricing.

CX 117A. In April 1982 Diamond sold its Delaware City PVC plant to Ethyl Corporation, and by December 1983 Diamond had closed or sold all its remaining PVC plants and disbanded its plastics division. IDF 14 *in camera*.

II. Section 7 of the Clayton Act

Section 7 of the Clayton Act prohibits acquisitions that may substantially lessen competition or tend to create a monopoly; that is, that create a reasonable likelihood of anticompetitive effects.[19] As the Court of Appeals for the Seventh Circuit indicated recently in affirming the Commission decision in *HCA*, the crucial question is

> whether the challenged acquisition is likely to hurt consumers, as by making it easier for the firms in the market to collude, expressly or tacitly, and thereby force price above or farther above the competitive level * * * the ultimate issue is whether the challenged acquisition is likely to facilitate collusion * * * the worry is that [the acquisition] may enable the acquiring firm to cooperate (or cooperate better) with other leading competitors on reducing or limiting output, thereby pushing up the market price.[20]

The Court went on to point out:

> Section 7 does not require proof that a merger or other acquisition has caused higher prices in the affected market. All that is necessary is that the merger create an appreciable danger of such consequences in the future. A predictive judgment, necessarily probabilistic and judgmental rather than demonstrable * * * is called for.[21]

In short, if an acquisition creates an "appreciable danger" of anticompetitive effects such as supracompetitive prices, then it violates section 7 of the Clayton Act.

III. Relevant Markets

The first step in determining whether a particular acquisition satisfies the foregoing standard is to delineate the relevant geographic and product markets.[22] As the Supreme Court has indicated,

> determination of the relevant market is a necessary predicate to a finding of a violation of the Clayton Act because * * * [s]ubstantiality can be determined only in terms of the market affected.[23]

A. Relevant Geographic Market

Relevant geographic markets can be delineated by measuring cross elasticities of supply and demand; that is, by determining the degree to which—within a given period of time—price changes in one area will induce changes in the quantities of the relevant product demanded in and supplied from other areas, with all other factors affecting supply and demand held constant.[24] Thus, the Supreme Court has determined that,

> [t]he area of effective competition in the known line of commerce must be charted by careful selection of the market area in which the seller operates and to which buyers can practicably turn for supplies.[25]

Consistent with that position, the Commission has determined that "the relevant geographic market must be broad enough that buyers would be unable to switch to alternative sellers in sufficient numbers to defeat an exercise of market power by firms in the area."[26] Similarly, the Department of Justice has concluded that an area is probably a relevant geographic market if a firm or a group of colluding firms within the area could "profitably impose a 'small but significant and nontransitory' increase in price"—in most contexts, a five percent increase lasting one year—without (1) inducing a significant number of buyers to shift to firms outside the area, or (2) inducing a significant number of sellers outside the area to begin selling inside the area.[27] It is often difficult to measure these effects directly, either by calculating cross-elasticities of supply and demand, or by calculating the degree to which firms within the area could in fact exercise market power.[28] Surrogates

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[14] DiLiddo, Tr. 3187–88, 3396.

[15] Schaefer, CX 295 Z97 *in camera*; CX 115C *in camera; see* CX 11J *in camera*.

[16] Under most tolling arrangements, a firm agrees to manufacture product for another firm using raw materials supplied by the other firm. Kienholz, Tr. 845–46.

[17] *See* CX 567; CX 570B.

[18] Beginning in March 1982 Diamond sold over 90 percent of its PVC production to Goodrich, pursuant to the tolling agreement. CX 300Z10 *in camera*; CX 117A–B.

[19] *Hospital Corporation of America*, 106 F.T.C. 361, 464 (1985) (*hereinafter HCA*), *aff'd*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, ____ U.S. ____, No. 86–1492 (May 3, 1987); *Echlin Manufacturing Co.*, 105 F.T.C. 410, 483 (1985); *B.A.T. Industries, Ltd.*, 104 F.T.C. 852, 919 (1984).

[20] *Hospital Corporation of America v. FTC*, 807 F.2d 1381, 1386 (7th Cir. 1986), *cert. denied*, ____ U.S. ____, No. 86–1492 (May 3, 1987) (*hereinafter HCA v. FTC*); *accord, HCA*, 106 F.T.C. at 477.

[21] *HCA v. FTC*, 807 F.T.C. at 1389 (citation omitted); *accord, United States v. General Dynamics Corp.*, 415 U.S. 486, 505 (1974); *HCA*, 106 F.T.C. at 499 ("actual anticompetitive effects need not be shown; an acquisition is unlawful if such an effect is reasonably probable").

[22] As the Commission has noted, one could arrive at relatively precise estimates of market power—without proceeding through the market definition-market structure paradigm—if one could measure "all relevant demand and supply elasticities." *Federal Trade Commission Statement Concerning Horizontal Mergers*, 2 Trade Reg. Rep. (CCH) ¶4516 (June 14, 1982) (*hereinafter FTC Statement*), at 6901–3. However, as the Commission has also noted, such evidence "is rarely, if ever, available, and is not readily susceptible to direct measurement." *Id. But see* Baker and Bresnahan, *The Gains From Merger or Collusion in Product-Differentiated Industries*, 33 J. Indus. Econ. 427 (1985) (direct assessment of market power through residual demand curve estimation).

[23] *United States v. E.I. duPont de Nemours & Co.*, 353 U.S. 586, 593 (1957); *accord United States v. Marine Bancorporation*, 418 U.S. 294,602, 618 (1974); *Brown Shoe Co. v. United States*, 370 U.S. 324 (1962); *Domed Stadium Hotel, Inc. v. Holiday Inn, Inc.* 732 F.2d 480, 491 (5th Cir. 1984); *Weyerhaeuser Co.*, 106 F.T.C. 172, 274 (1985); *American Medical International*, 104 F.T.C. 1, 190–191 (1984) (*hereinafter AMI*).

[24] *Weyerhaeuser Co.*, 106 F.T.C. at 274; *Grand Union Co.*, 102 F.T.C. 812, 1039–40 (1983); *Beatrice Foods Co.*, 101 F.T.C. 733, 836 (1983) (Douglas, Commissioner, and Miller, Chairman, concurring); *FTC Statement*, ¶4516 at 6901–7.

[25] *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961); *accord United States v. Philadelphia National Bank*, 374 U.S. 321, 359 (1963).

[26] *HCA*, 106 F.T.C. at 466.

[27] *Justice Department Merger Guidelines*, 2 Trade Reg. Rep. (CCH) ¶4490 *et seq.* (1984) (*hereinafter DOJ Guidelines*) at ¶¶2.11, 2.31.

[28] *But see* Scheffman and Spiller, *Geographic Market Definition Under the United States Department of Justice Merger Guidelines*, 30 J. L. & Econ. 123 (1987) (operationalizes *DOJ Guidelines* market definition algorithm by estimating residual demand elasticities).

such as persistent price differences; price change differences; similarities or differences in price movements; impediments to trade, such as transportation costs that are high relative to product value; shipment patterns and transshipment levels; and industry perceptions therefore may be used. [29] Imports that could profitably enter the market within one year in response to a "small but significant and nontransitory" price increase should also be included. [30]

In this case, the parties have stipulated that the United States as a whole is the relevant geographic market (IDF 15), a delineation that is consistent with the record evidence.

B. Relevant Product Market

A relevant product market can also be delineated by measuring cross-elasticities of supply and demand; that is, by determining the degree to which—within a given period of time—changes in the price of a given product or service will induce changes in the quantities of a second product or service that are demanded or supplied. [31] Thus, the Supreme Court has concluded that both demand and supply substitutability are relevant to determining the contours of a relevant product market. [32] Consistent with that position, the Commission seeks "to define a product or group of products sufficiently distinct that buyers could not defeat an attempted exercise of market power on the part of sellers of those products by shifting purchases to still different products." [33] Similarly, the Justice Department has concluded that a given item constitutes a relevant product if its manufacturer could "profitably impose a 'small but significant and nontransitory' increase in price"—in most contexts, a five percent increase lasting one year—without (1) inducing a significant number of buyers to begin purchasing substitute products, or (2) inducing a significant number of manufacturers of other products to begin producing the product at issue. [34] It is often difficult to measure these effects directly, either by calculating cross-elasticities of supply and demand, or by calculating the degree to which firms within the postulated product market could in fact exercise market power. Surrogates such as distinctive uses or characteristics, industry firm perceptions, and persistent price differences over time may therefore be considered. [35]

1. Bulk and Suspension Polyvinyl Chloride

PVC is manufactured from ethylene, a petroleum compound, and chlorine. [36] These chemicals are first converted into ethylene dichloride, which is then "cracked" to produce vinyl chloride monomer ("VCM"). VCM molecules are then linked into chains ("polymerized") by heating them in the presence of certain catalysts. IDF 17, 19. Approximately 85 percent of all PVC manufactured in the United States is classified as "suspension PVC." IDF 21; Disch, Tr. 627–28. It is produced by adding suspension agents to VCM, in the presence of water and catalysts, thereby producing large PVC particles while using smaller amounts of energy than other processes require. IDF 21; Disch, Tr. 627–29. Approximately 5 percent of all PVC manufactured in the United States is classified as "bulk PVC." It is produced by polymerizing VCM without adding any liquids, producing a purer product suitable for end use applications requiring greater optical clarity, such as packaging materials. [37]

When combined with other ingredients, such as stabilizers, plasticizers or impact modifiers, [38] PVC resin can be used to manufacture a wide variety of products, including pipe and pipe fittings, wire and cable insulation, packaging film for meat and produce, vinyl siding, floor tile, bottles, medical and surgical tubing, records, and vinyl window frame components. IDF 18 *in camera*. In 1981, approximately 5.242 billion pounds of PVC were produced for domestic consumption; by 1983 that total had increased to 5.635 billion pounds. [39] During the 1981–1983 period, approximately 43 to 44 percent of total PVC resin consumed was used to produce pipe and pipe fittings; [40] 20 to 25 percent was used to produce calendered products; [41] 10 percent was used in wire and cable applications (IDF 147); and 6 to 7 percent was used for packaging film and sheet. [42]

The parties have stipulated that the production of bulk and suspension PVC is a relevant product market (IDF 16), a delineation that is consistent with the record evidence. Firms that currently purchase PVC resin to manufacture PVC end use products cannot substitute other inputs in response to a small increase in PVC resin prices; there are simply no substitutes for PVC resin as an input to produce these products. [43] Moreover,

[29] *United States v. General Dynamics Corp.*, 415 U.S. 486, 490–91 and n.3 (1974); *Grand Union Co.*, 102 F.T.C. at 1041; *FTC Statement*, ¶4516 at 6901–7; *DOJ Guidelines* at ¶2.32.

[30] *See, e.g., HCA*, 106 F.T.C. at 466–467. On the other hand, imports that could profitably enter the market within twelve months to two years are treated as new entry under the DOJ Guidelines. *DOJ Guidelines* at ¶3.3. Here, in view of the parties' stipulation that the United States constitutes the relevant geographic market, we consider respondents' arguments concerning the impact of imports in our analysis of entry conditions. *See* pages 36–38, 42–43, *infra*.

[31] *Grand Union Co.*, 102 F.T.C. at 1039–40; *Beatrice Foods Co.*, 101 F.T.C. at 830 (Douglas, Commissioner, and Miller, Chairman, concurring); *FTC Statement*, ¶4516 at 6901–6.

[32] *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 and n.42 (1962); *United States v. Columbia Steel Corp.*, 334 U.S. 495, 510–511 (1948); *see also United States v. E. I. dePont de Nemours & Co.*, 351 U.S. 377 (1956).

[33] *HCA*, 106 F.T.C. at 464, 466.

[34] *DOJ Guidelines* at ¶2.11.

[35] *Grand Union Co.*, 102 F.T.C. at 1041; *FTC Statement*, ¶4516 at 6901–6 through 6901–7; *DOJ Guidelines* at ¶2.12.

[36] Chlorine is produced by applying an electrical current to brine; the process yields one pound of chlorine to 1.1 pounds of caustic soda. Chlorine is highly volatile and corrosive, and therefore cannot be stored economically. RPF 45, 46. Ethylene is manufactured by cracking petroleum feedstocks such as ethane, propane, butane or naphtha. RPF 49.

[37] IDF 23; Disch Tr. 629, 633. The remaining 8 to 10 percent of PVC manufactured in the United States is produced through a "dispersion process," in which emulsifying agents are used, in conjunction with an expensive spray drying process, to produce very small PVC particles. IDF 22; Disch, Tr. 630. The complaint also alleged a violation in the dispersion PVC market, but complaint counsel elected not to pursue—and presented no evidence concerning—that allegation at trial. ID at 2 n.2. Bulk and suspension PVC resins have "quite different" applications than dispersion resins. Disch, Tr. 634. In order to simplify the discussion, the term "PVC" in this opinion refers to bulk and suspension PVC, and not to dispersion PVC.

[38] These ingredients are added to PVC resins to produce PVC compounds, which are used in turn to manufacture PVC end use products. Disch, Tr. 655–58.

[39] *See* Tables I and II, *Infra*.

[40] IDF 99; Disch, Tr. 663. This end use includes municipal water pipe (200 million pounds of PVC resin in 1983); rural water pipe (340 million pounds); water services and distribution pipe (260 million pounds); sewer and drain pipe (480 million pounds); drain, waste and vent pipe (450 million pounds); irrigation pipe (150 million pounds); communications duct (280 million pounds); and electrical conduit (120 million pounds). IDF 109, 121, 123, 127, 133, 138, 142, 144 (amounts *in camera*).

[41] IDF 190. Calendered products are produced through "calendering," in which large heated rolls are used to produce wide sheets of PVC material. Rigid calendered sheet is used to manufacture rigid products such as decorative laminates and credit card stock. Flexible calendered sheet is used to manufacture more flexible products such as wall coverings, upholstery, automotive interiors and landau tops, luggage, wallets, raincoats, footwear, and a variety of other products. IDF 190 and ID at 58 n.40.

[42] IDF 152. The remaining approximate percentages of the total over the 1981–1983 period were devoted to vinyl siding and accessories (5 percent); floor tile (3–4 percent); bottles (3–4 percent); medical applications (2 percent); phonograph records (2–3 percent); and windows (1 percent). IDF 154, 165, 169, 179 (and Table I), 185, 189 (and Table I) (percentages *in camera*); Disch, Tr. 664.

[43] There are, of course, substitutes for the end products made from PVC resin. They are discussed in detail in Part IV.C.2.a., *infra*.

firms producii g other products are unlikely to switch to producing PVC in response to a small increase in PVC resin prices, because the machinery needed to produce PVC is essentially unique to that application. *See* Disch, Tr. 663.

2. Vinyl Chloride Monomer

VCM is a "gaseous, reactive, acyclic intermediate chemical" under atmospheric temperature and pressure.[44] It is produced by thermally cracking purified ethylene dichloride at high temperatures. Ethylene dichloride is produced, in turn, by either oxyhydrochlorinating or directly chlorinating ethylene. IDF 32; Kienholz, Tr. 757–58. Approximately 0.6 pound of chlorine and 0.49 pound of ethylene are used to manufacture one pound of VCM. CPF 2.18 *in camera;* RPF 41 *in camera.* Small amounts of VCM are used to produce other plastics, but over 95 percent of the VCM consumed in the United States is used to manufacture PVC. IDF 31. Approximately 1.02 to 1.04 pounds of VCM are required to manufacture one pound of PVC. Kaserman, Tr. 2456. A substantial amount of processing—accounting for approximately 37 to 45 percent of the cost of producing PVC—is required to convert VCM into PVC. [45] In 1981, 6.856 billion pounds of VCM were produced for domestic consumption; by 1983 that total had increased to 7.033 billion pounds.[46]

Complaint counsel argued—and Judge Howder agreed—that VCM constitutes a relevant product market. IDF 16; CAB at 7 and n. 11; CRB at 53–56. Respondents agree that "VCM is a product without substitutes, produced by distinct companies utilizing unique facilities." RPF 228 *in camera.* They argue, however, that VCM is not a relevent market "that could be subject to the exercise of market power" because VCM's only utility is in the manufacture of PVC and because VCM is "virtually fully integrated" into PVC by ownership or long term contracts. As a result, according to the respondents, "VCM and PVC producers are engaged in a single business, with the price of PVC determining revenues for all participants." [47]

We conclude that VCM is a relevant product market for the purpose of section 7 analysis. Even if the respondents' analysis were to apply if VCM and PVC were completely integrated, the record shows that the degree of vertical integration by ownership between VCM and PVC is neither complete nor symmetrical. IDF 78. Before the Goodrich acquisition, nonintegrated producers accounted for 46.9 percent of VCM practical production capacity and approximately 44.6 percent of PVC practical production capacity.[48] Accordingly, there is a market in which VCM is bought and sold that could be subject to the exercise of market power. The long term VCM supply contracts to which the respondents refer typically give the firms they cover independent discretion as to the quantity they will buy or sell, and their customers and sources of supply.[49] Moreover, under most VCM supply contracts, neither the price nor the quantity is fixed; instead, both are subject to negotiation on a frequent basis. In addition, contract prices are often closely tied to VCM market prices by meeting competition clauses or specific references to competitors' VCM prices. Furthermore, even firms that are vertically integrated by ownership participate in the VCM market from time to time as either buyers or sellers of VCM, through sales, purchases and exchanges keyed to the market price of VCM. IDF 296–301 *in camera.*

From the perspective of the demand and supply elasticity analysis outlined above, the Commission therefore has concluded that VCM should be classified as a separate product market. A small increase in VCM prices is not likely to induce a significant increase in the quantity of a competing product that is demanded, because there are no substitutes for VCM, which must be used in fixed proportions to produce PVC.[50] In fact, one Goodrich document describes demand for VCM as "absolutely inelastic." [51] Moreover, a small increase in VCM prices is not likely to induce producers of other products to switch to supplying VCM; no plants currently producing other products could be shifted into VCM production.[52] Thus, a group of colluding firms in the VCM market could sustain a price increase of at least five percent for at least one year.

As noted *supra,* a number of PVC producers—including Goodrich and Diamond at the time of the acquisition—also produce VCM. The Commission has determined that "captive production" of this type

> should ordinarily be treated as part of the relevant product market in merger cases when, as the Justice Department has suggested, a "small but significant and nontransitory" price increase in likely to induce vertically integrated firms to increase production of the relevant product, either for outside sales or to increase their own downstream sales.[53]

Under this standard, internally consumed VCM should be treated as part of the VCM market. Integrated VCM producers could respond to VCM price increases initiated by nonintegrated producers by increasing VCM production, either for sale or for producing additional quantities of PVC.[54] VCM producers consider both independent and integrated VCM producers to be competitors in supplying PVC producers, and PVC producers secure VCM from both integrated and nonintegrated sources.[55] Any effort among nonintegrated VCM producers to collude could not succeed without the cooperation or acquiescence of integrated producers.[56]

IV. Structural Factors

The foregoing discussion establishes that the PVC market and the VCM market are relevant product markets, and that the United States is the relevant geographic market. The next step is to determine whether the acquisition at issue may substantially lessen competition by facilitating collusive conduct (or other anticompetitive behavior) among the

[44] IDF 30. VCM is normally stored and transported as a liquid under pressure. L. Wheeler, Tr. 917.

[45] *See e.g.,* RX 1213H *in camera.*

[46] *See* Tables IV and V, *infra.*

[47] RAB at 57. However, the respondents' economic expert testified that VCM "may likely meet" the *DOJ Guidelines* criteria for a market "and thus is a market definition concept that I can work with." Klass, Tr. 4473–74.

[48] *See* Table VII, *infra.* In *Weyerhaeuser Co.,* 106 F.T.C. 172, 271 (1985), the Commission found that corrugating medium was a relevant product market, even though only 12 percent of corrugating medium consumed was sold on the open market.

[49] For example, under a contract between Shell and Tenneco, Tenneco may resell any or all of the VCM it purchases from Shell; Shell may sell VCM to other firms; Tenneco may buy VCM from other firms; and Shell controls the factors that determine contract prices. Disch, Tr. 703–04, 726–27.

[50] Kaserman, Tr. 2456; L. Wheeler, Tr. 919 *in camera.*

[51] Lefebvre, CX 296Z *in camera.*

[52] Klass, Tr. 4706–07; Kaserman, Tr. 2455–56; Kienholz, Tr. 821; L. Wheeler, Tr. 990.

[53] *B.A.T Industries, Ltd.,* 104 F.T.C. at 934, *citing DOJ Guidelines at* ¶ 2.23; *accord Spectrofuge Corp.* v. *Beckman Instruments, Inc.,* 575 F.2d 256, 278 (5th Cir. 1978), *cert. denied,* 440 U.S. 939 (1979); *International Tel. & Tel.* v. *General Tel. & Elecs. Corp.,* 518 F.2d 913, 930 (9th Cir. 1975). *But see Grumman Corp.* v. *LTV Corp.,* 665 F.2d 10, 13–14 (2d Cir. 1981).

[54] Kaserman, Tr. 2456–59.

[55] L. Wheeler, Tr. 932 *in camera;* Kienholz, Tr. 786, 856–57; Klass, Tr. 3998, 4008; Taylor, Tr. 1563–65, 1623.

[56] Kaserman, Tr. 2458–59; *see* Klass, Tr. 1049–52.

firms remaining in the industry. As the Commission has stated, the legal analysis of horizontal mergers "'has focused on the extent to which the mergers * * * enhance the ability of firms to collude, either expressly or tacitly.'"[57] The Seventh Circuit has confirmed that the issue is

> whether the challenged acquisition is likely to facilitate collusion . . . the worry is that [the acquisition] may enable the acquiring firm to cooperate (or cooperate better) with other leading competitors in reducing or limiting output, thereby pushing up the market price.

HCA v. *FTC*, 807 F.2d at 1386.

The effective coordination of price and output strategies requires developing a consensus concerning price and output levels, and a means of enforcing its terms.[58] The first step requires harmonizing the incentives of participating firms and mitigating firm uncertainty concerning rival firms, so that they can effectively coordinate their behavior.[59] The second step requires creating circumstances in which the prospective value to each participating firm of cheating on the consensus does not exceed the prospective loss from rival firm retaliation.[60] In order to create and maintain these circumstances, participating firms must be able to monitor rival firm conduct; that is, they must be able to detect cheating on the consensus. They must also be able to retaliate effectively if and when cheating occurs.

Structural conditions within an industry are crucially important to determining the feasibility of collusion, and consequently to determining whether a particular merger or acquisition is likely to have anticompetitive effects. An industry in which an acquisition is most likely to have anticompetitive effects will be characterized by the following attributes: (1) Relatively high barriers or impediments to entry; (2) a relatively high level of concentration; (3) a low level of product differentiation, and a low level of geographic differentiation occasioned by transportation cost differences; (4) a relatively inelastic demand for industry output at competitive price levels; (5) insignificant intra-industry differences in cost functions; (6) a large number of small buyers; (7) a high degree of transaction frequency and visibility; and (8) relatively stable and predictable demand and supply conditions.[61] Not all of these criteria need to be satisfied in order to establish that an acquisition may substantially lessen competition, but they are all relevant to one degree or another. This part of the Opinion analyzes each of these factors in detail. In addition, it evaluates the competitive significance of vertical integration between the VCM and PVC markets.

A. Barriers and Impediments to Entry

The absence of barriers or impediments to entry makes it highly unlikely that a merger or acquisition will have anticompetitive effects, because any effort to extract supracompetitive prices and profits will induce new entry, which will reduce prices to competitive levels. Even if new entrants are willing to participate in an ongoing effort to coordinate price and output levels, accommodating their conflicting incentives is likely to be difficult. The Supreme Court has therefore recognized that an evaluation of the likely competitive effects of an acquisition should include an appraisal of the potential for competition from firms not currently in the relevant market. For example, in *United States* v. *Falstaff Brewing Corp.*, the Court noted that although Falstaff did not currently sell the relevant product in the relevant geographic market, it clearly possessed the potential to enter relatively easily, and therefore constrained the pricing discretion of incumbent firms.[62]

For similar reasons, the Commission has concluded that in the absence of barriers or impediments to entry, an acquisition cannot have anticompetitive effects, and therefore cannot violate section 7 of the Clayton Act.[63] The Justice Department has taken the same position:

> If entry into a market is so easy that existing competitors could not succeed in raising price for any significant period of time, the Department is unlikely to challenge mergers in that market.

DOJ Guidelines at ¶3.3. By contrast, high entry barriers "increase the probability that market power will result from an acquisition."[64] The Commission has defined entry barriers as additional long-run costs that must be incurred by an entrant, but that were not incurred by incumbent firms.[65] The Commission has noted that a long-run differential could create "a permanent barrier to new entry" that would permit incumbent firms to secure supracompetitive prices and profits indefinitely.[66] Governmental restrictions may create such a barrier,[67] and environmental regulations represent an example.[68] The Commission has

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[57] *Weyerhaeuser Co.*, 106 F.T.C. at 273–274, *quoting FTC Statement*, ¶ 4516 at 6901–2. This case does not involve the alternative situation in which an acquisition permits a single firm to acquire or enhance market power approaching monopoly proportions.

[58] *See, e.g.*, R. Posner, *Antitrust Law: An Economic Perspective* 51 (1976); Salop, *Practices That (Credibly) Facilitate Oligopoly Coordination*, in *New Developments In the Analysis of Market Structure* (J. Stiglitz and G. F. Mathewson eds. 1986); Hay, *Oligopoly, Shared Monopoly, and Antitrust Law*, 67 Cornell L. Rev. 439, 445 (1982); Clark, *Price-Fixing Without Collusion: An Economic Analysis of Facilitating Prictices After Ethyl Corp.*, 1983 Wis. L. Rev. 887, 891 (1983).

[59] *E.g.*, Clark, *supra* note 58, at 892.

[60] *E.g.*, *id.* at 893.

[61] *See, e.g.*, *Ethyl Corp.*, 101 F.T.C. 425, 602–03, 607–09 (1983), *rev'd on other grounds sub nom. E.I. du Pont de Nemours & Co.* v. *FTC*, 729 F.2d 128 (2d Cir. 1984); *FTC Statement* ¶ 4516 at 6901 through 6901–5; *DOJ Guidelines* at ¶ 3.2; Posner, *supra* note 58, at 55–61; P. Areeda, *Antitrust Analysis* ¶ 262 (1981); F. Scherer, *Industrial Market Structure and Economic Performance* 171–72 (2d ed. 1980); G. Stigler, *The Organization of Industry* 39–45 (1968); Markham, *The Nature and Significance of Price Leadership*, 41 Amer. Econ. Rev. 891, 901–03 (1951); Clark, *supra* note 58, at 894–99. *See generally United States* v. *Citizens & Southern National Bank*, 422 U.S. 86, 120–22 (1975); *United States* v. *General Dynamics Corp.*, 415 U.S. 486, 503–05 (1974).

[62] *United States* v. *Falstaff Brewing Corp.*, 410 U.S. 526, 531–34 (1973); *accord FTC* v. *Procter & Gamble Co.*, 386 U.S. 568, 581 (1967); *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158, 173–74 (1964); *see also United States* v. *Philadelphia National Bank*, 374 U.S. at 367 and n. 44.

[63] *Echlin Manufacturing Co.*, 105 F.T.C. at 484, 487; *accord United States* v. *Waste Management, Inc.*, 743 F.2d 976, 981–984 (2d Cir. 1984); *United States* v. *Calmar Inc.*, 612 F. Supp. 1298, 1305 (D.N.J. 1985); *United States* v. *Tracinda Investment Corp.*, 477 F. Supp. 1093, 1108 (C.D. Cal. 1979); *United States* v. *M.P.M., Inc.*, 397 F. Supp. 78, 92, 94 (D. Colo. 1975); *HCA*, 106 F.T.C. at 489; *FTC Statement*, ¶ 4516 at 6901–3 ["if entry barriers are very low it is unlikely that market power, whether individually or collectively exercised, will persist for long."]; *see B.A.T Industries, Ltd.*, 104 F.T.C. at 919; *Grand Union Co.*, 102 F.T.C. at 1063. Hence, in evaluating the prospect of anticompetitive effects from a particular acquisition, the Commission must first determine whether any barriers or impediments to entry make the sustained exercise of market power feasible.

[64] *Grand Union Co.*, 102 F.T.C. at 1063–64; *accord FTC Statement*, ¶4516 at 6901–3.

[65] *Echlin Manufacturing Co.*, 105 F.T.C. at 485, *citing, e.g.*, G. Stigler, *supra* note 61 at 67; *accord HCA*, 106 F.T.C. at 491; *Weyerhaeuser Co.*, 106 F.T.C. at 286. In the rest of this opinion, the term "barriers to entry" is intended to refer to "Stiglerian" barriers to entry.

[66] *Echlin Manufacturing Co.*, 105 F.T.C. at 485–86.

[67] For example, in *HCA* the Commission noted that both Georgia and Tennessee required prospective or incumbent hospitals to secure "certificates of need" from their respective States before, *inter alia*, establishing new acute care hospitals, expanding the bed capacity of existing hospitals, changing the services they offered, or making significant capital expenditures. *HCA*, 106 F.T.C. at 489–91. Securing these certificates required following elaborate, time-consuming procedures, and the Commission concluded that these procedures represented a classic barrier to entry. *Id.* at 491.

[68] *Weyerhaeuser Co.*, 106 F.T.C. at 287.

determined that the relevant costs for comparison purposes are the "economic costs measured at the time of entry;" that is, the costs that each firm—whether an incumbent or a prospective entrant—confronts at the time of its entry effort.[69]

Impediments to entry that do not rise to the level of absolute barriers to entry may nevertheless permit the exercise of market power for substantial periods of time. The Commission has defined impediments to entry as

> any condition that necessarily delays entry into a market for a significant period of time and thus allows market power to be exercised in the interim.[70]

The Commission has more recently indicated that when new entry is possible only through the construction of a plant that cannot be completed in less than four to four and one half years, that constitutes an impediment to entry.[71] The nature of sales contracts within an industry helps to determine the significance of the delay arising from impediments to entry. If most prices are fixed pursuant to contracts with terms longer than the delay occasioned by impediments to entry, then the impediments may have no competitive significance.

As the time and expenditures needed to overcome barriers and impediments to entry increase, the likelihood that a given acquisition will have anticompetitive effects, *ceteris paribus*, increases as well. In this case, both the PVC and the VCM markets are characterized by substantial barriers and impediments to entry, and fringe firms are unlikely to constrain collusive conduct in either market.

1. *PVC Market*

Under current conditions, four or five years would be required to plan and construct a new bulk or suspension PVC plant, or to expand an existing plant,[72] including one to two years for required environmental permits; [73] at least six months for pre-permit engineering; [74] and two years for actual construction. IDF 65–67; Schaefer, Tr. 1133. Additional time—up to one year—may be needed for prospective entrants to evaluate and secure the technology licenses needed to begin PVC production.[75] Because these factors necessarily delay entry into the PVC market for a substantial period of time, they constitute a substantial impediment to entry. Moreover, because some of the environmental regulations were adopted recently—and have significantly increased the length of time required to enter the PVC market—they constitute a significant barrier to entry.

The environmental restrictions constrain both new entry and expansion by incumbent firms. Air emissions from PVC and VCM plants are subject to a number of air quality restrictions created pursuant to the Clean Air Act, 42 U.S.C. 7401–7642, including specific standards covering vinyl chloride emissions.[76] Therefore, preconstruction permits must be obtained for all new PVC plants, and for major expansions of existing plants, certifying that they will comply with a variety of "Prevention of Serious Deterioration" ("PSD") regulations.[77] The PSD regulations are relatively restrictive in areas that currently meet federal air quality standards—requiring, *inter alia*, preconstruction permits[78]—and even more restrictive in areas that do not currently meet those standards.[79]

Moreover, in 1980 EPA amended its PSD regulations to require the presentation of continuous air monitoring data *prior* to the processing of a permit application. Diamond estimated that this requirement:

> could add up to one year to the time it takes to get a construction permit. This means it will take from one to two years to get a PSD Permit before construction can begin.

CX 446D. Tenneco similarly estimated that one year of ambient air quality monitoring would probably be required before the submission of a preconstruction permit application. CX 574J.

In addition, effluent discharges from VCM and PVC resin plants are subject to the restrictions of the Clean Water Act, as amended by the Federal Water Pollution Control Act, 33 U.S.C. 1251–1376. The EPA has specifically designated vinyl chloride as a toxic pollutant, 33 U.S.C. 1317; 40 CFR 401.15, and PVC plants as pollutant discharge point sources.[80] As a result, new and existing PVC manufacturing facilities must comply with the permit requirements of the National Pollutant Discharge Elimination System. 33 U.S.C. 1342. PVC plants may also be subject to a variety of local regulations such as land use restrictions. IDF 66; ID at 18 n.13.

These requirements have significantly lengthened the lead time and increased the risk associated with new plant construction and plant expansion since 1976. In one internal document, Goodrich noted:

> Complicating the development and implementation of new processes is the long lead time required for plant expansions and constructing grass root PVC plants. *This is now four to five years vs. the three years formerly required* due to the increasing number of local and federal restrictions and necessary approvals. The result is R&D's time table to freeze a plant design is drastically shortened . . . By-passing stages in process development to meet the shorter time tables will significantly increase the risks of long costly plant start-ups and not meeting planned capacity goals.[81]

Recent plant construction efforts confirm these assessments. For example, Formosa—which already had access to the production technology it needed—began a new PVC/VCM plant construction effort in the latter part of 1978, and was not able to start operating

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[69] *Echlin Manufacturing Co.*, 105 F.T.C. at 486. The fact that an incumbent firm confronts lower costs than a prospective entrant at the time the latter firm attempts to enter is not necessarily relevant. The incumbent's lower current costs may simply represent compensation for the risks it overcame when it entered. *Id.*

[70] *Id.* at 486; *accord Weyerhaeuser Co.*, 106 F.T.C. at 286–87. The economic literature on "strategic entry deterrence" suggests that practices that fall within this characterization may also impede entry. *See generally* Salop, *Strategic Entry Deterrence*, 79 Am. Econ. Rev. 335 (Papers and Proceedings) (1979).

[71] *Weyerhaeuser Co.*, 106 F.T.C. at 287. The Commission found that greenfield entry would require four to four-and-one-half years per plant from beginning to end, including the time required for plant development, site selection, design work, applications for environmental permits, and actual construction. *Id.* Nine recent plant expansions in the relevant market indicated, however, that "existing facilities [could] be upgraded fairly easily, and at relatively low cost." *Id.* at 287–88. The Commission therefore concluded that the consequent "possibility of expanded output by fringe firms" limited "the possibility of anticompetitive behavior." *Id.* at 289. In this case, by contrast, barriers and impediments to both greenfield entry and incumbent plant expansion are high.

[72] IDF 64; CX 15A; CX 16B–Z10 *in camera*; CX 196A *in camera*; CX 439B; CX 446C; *see* Disch. Tr. 653 (3–4 years).

[73] Schaefer, Tr. 1133; CX 38V *in camera*; CX 506B, 592 *in camera*; IDF 66.

[74] DiLiddo, Tr. 3337; IDF 67.

[75] Disch, Tr. 645–47; Schaefer, Tr. 1133; IDF 69.

[76] *National Emissions Standard for Vinyl Chloride*, 40 CFR 61.60–61.68, promulgated pursuant to the *National Emission Standard for Hazardous Air Pollutants*, 42 U.S.C. 7412. Vinyl chloride has been specifically designated as an environmental pollutant; as a result, in 1976 the Environmental Protection Agency promulgated a standard to reduce atmospheric VCM emissions. In 1975, the Occupational Health and Safety Administration determined that VCM is a highly specific cause of liver cancer, and therefore promulgated a standard to reduce worker exposure to residual VCM. Disch. Tr. 649; Kienholz, Tr. 755.

[77] *Prevention of Significant Deterioration*, 40 CFR 51.24(b)(23), 52.21(b)(23).

[78] 42 U.S.C. 7407, 7475; 40 CFR 51.24, 52.21.

[79] 42 U.S.C. 7501–7508; 40 CFR 52.24.

[80] 33 U.S.C. 1316(B)(1)(A); *see* 40 CFR 401.12, 416.10–416.15.

[81] CX 196A *in camera* (emphasis added); *accord* CX 14F *in camera* ("Building permits are being delayed by government regulations, causing longer lead times and/or higher RISKS to build new plants.").

the new facility until December, 1982. IDF 70; ID at 20 n. 15. When Goodrich began its never-completed Convent, Louisiana suspension PVC plant project in July 1979, it had already spent eight months conducting an extensive PVC/VCM strategy and site selection study, and did not expect to bring the plant onstream until the third quarter of 1983. IDF 71. Similarly, in 1981 Diamond projected the lead time for a new suspension PVC plant at Deer Park, using its own technology, to be four to five years "from concept to startup." IDF 72.

In short, newly adopted environmental restrictions may be characterized as a barrier to entry into the PVC market. They substantially slow both the construction of new capacity and the expansion of existing capacity, and represent a new cost that incumbent firms did not have to bear. Some expansion of existing facilities by large incumbent firms has occurred since 1970. However, expansion usually constrains the pricing discretion of incumbent firms only if it is undertaken by a fringe firm that is not likely to be a party to a collusive arrangement.[82] The number of firms that may be characterized as "fringe" PVC producers has been declining steadily. As Tables I and II indicate, in addition to Diamond Shamrock, three fringe firms—Stauffer Chemical, Talleyrand Chemicals, and Great American Chemical—left the PVC market between 1981 and 1983.

Goodrich and other incumbent firms have on a number of occasions recognized that entry into the PVC market is difficult. In one internal assessment, Goodrich concluded that "[r]elatively high barriers to entry should prevent a large number [of] expansions or new entries." [83] Actual entry experience supports this view; no *de novo* entry has occurred since 1975.[84] Mr. Disch of Tenneco testified that he did not expect any new entrants into the PVC market over the next three or four years.[85]

Of course, PVC imports are not constrained by domestic environmental restrictions, and they have increased to some degree over the last few years. In 1977, imports represented only 0.6 percent of U.S. bulk and suspension PVC consumption; in 1984 they accounted for approximately 4 percent of that total.[86] Much of the increase in imports, however, appears to be attributable to extraordinary events affecting domestic PVC supply and currency exchange rates. The dollar increased in value by 66 percent between the third quarter of 1980 and the third quarter of 1984,[87] producing, *ceteris paribus*, a 66 percent increase in domestic PVC prices, in comparison with foreign PVC prices. Even if these exchange fluctuation effects are not considered, domestic prices increased considerably more during the last part of that period than the 5 percent increase that is usually applied to define the relevant market, because freezing weather conditions during the 1983–1984 winter forced several domestic PVC plants to shut down.[88] Thus, imports are a small proportion of domestic PVC consumption and, absent extraordinary conditions, do not appear to constrain domestic prices.

In addition, PVC imports manufactured by domestic producers in other countries are unlikely to constrain collusion among those same domestic producers. Canada and Mexico are the principal sources of PVC imports.[89] Goodrich is the largest PVC producer in Canada,[90] and is a major PVC producer in Mexico.[91] Furthermore, PVC imports from overseas countries must be transported over water in bags, rather than in rail tank cars, at a cost disadvantage—relative to North America PVC—of three to seven cents per pound. H. Wheeler, Tr. 1776–77. This is a substantial disadvantage; three cents per pound represents 9 to 18 percent of the average selling price of "general purpose PVC resin"—17 cents to 35 cents per pound—during the 1981–1983 period. *See* note 179 *infra*. For all of these reasons, we conclude that PVC imports do not significantly constrain domestic pricing discretion.

2. VCM Market

The VCM market is also characterized by a substantial barrier and impediment to entry created by plant construction requirements, and an impediment to entry created by minimum scale requirements. First, substantial lead time—from four to five years—is required to construct a new VCM plant, or to expand an existing plant, including six months to perform required preliminary engineering work; one to two years to secure needed environmental permits (the same ones noted in the PVC discussion, *supra*); six months to evaluate and secure needed VCM manufacturing technology; and one to two years for actual construction. IDF 272–277 *in camera;* Kienholz, Tr. 803–05. For example, as detailed *supra*, it took Formosa—which already had the requisite manufacturing technology in hand—about four and one-half years to construct its PVC/VCM complex. IDF 278. Similarly, Goodrich expected its proposed VCM plant in Louisiana to require approximately four years for construction. IDF 279 *in camera*. Incumbent firms confronted shorter timetables than prospective new entrants would confront now. As noted *supra*, in 1980 the Environmental Protection Agency amended its regulations to require air quality monitoring *prior* to filing permit applications. Diamond and Tenneco documents indicate that this additional requirement would add at least one year to the time needed to construct new plants, or to add capacity to existing plants where continuous air monitoring is not already in effect.[92]

Second, substantial minimum efficient scale requirements are likely to impede entry into the VCM market. If a new entrant must achieve a sales level that is

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[82] Weyerhaeuser Co., 106 F.T.C. at 287–88 and n. 69.

[83] CX 199Z76; *accord* CX 199Z82; CX 248E *in camera*.

[84] Kaserman, Tr. 2341–44; CS 664G, W *in camera*. Respondents argue that Formosa entered in 1974, "exited and then reentered in 1981" (RAB at 53), but Formosa's efforts are more akin to an expansion than to *de novo* entry.

[85] Disch, Tr. 692–93. At least two other factors may impede efforts to enter the PVC market to some degree. First, an entry effort at minimum efficient scale would apparently require at least 300 million pounds of annual production capacity, at a cost of $100 million. IDF 60; Schaefer, Tr. 1211–12; Diamond Admission 450 (CX 6S). In 1981 that represented 5.8 percent of total PVC production in the United States. *See* Table I, *infra*. It would be difficult to secure that percentage of total market sales without provoking a price response from incumbent firms. *See* Salop, *Measuring Ease of Entry*, 31 Antitrust Bulletin 551 (1986).

Second, sunk costs may represent an impediment to new entry. IDF 63; *see* IDF 73–75. PVC plants are suitable only for manufacturing PVC, and investing in such a plant therefore entails the risk of losing the entire investment. One might ordinarily conclude that incumbent firms faced precisely the same risks when they entered the PVC industry. However, Goodrich believed that its "preemptive strategy" heightened the risks associated with expansion or new entry into the PVC market. *See* CX 47B; CX 59D *in camera; see generally* Salop, *supra* note 70.

[86] RAB at 33 [240 million pounds is 4 percent of estimated domestic consumption of 5.635 billion pounds (*see* Table II, *infra*) in 1983].

[87] *Compare* CX 776E *with* CX 777E. The value of the dollar against other currencies—as measured by the Federal Reserve Board's index of weighted average exchange value—has more recently declined, producing the opposite effect, and making import prices less attractive relative to domestic prices.

[88] Kaserman, Tr. 2249–50; L. Wheeler, Tr. 986–89; DiLiddo, Tr. 3380–81; H. Wheeler, Tr. 1775–76.

[89] Kaserman, Tr. 2248; Taylor, Tr. 1687.

[90] Kaserman, Tr. 2248; CX 299 O–P *in camera;* RX 190D; *see* CX 92K.

[91] Kaserman, Tr. 2249; CX 299 O–P *in camera; see* CX 92K.

[92] CX 446D; CX 574J; CRB at 40–41 n. 53; *see also* Kienholz, Tr. 803–04.

a substantial percentage of total industry output—in order to avoid suffering a significant cost disadvantage relative to other firms—its entry will increase industry supply significantly. If demand does not increase to the same degree, prices are likely to fall, because incumbent firms are more likely to lower prices than to surrender market share. Faced with the prospect of either a substantial cost disadvantage or nonrenumerative prices, a prospective entrant is not likely to enter.

The minimum efficient scale for a VCM plant is generally considered to be 800 million to 1 billion pounds in annual production capacity.[93] When it built its billion pound VCM plant in the 1970's, Diamond "considered it essential to build a plant with a production capacity of one billion pounds of VCM per year" (CX 424B; *accord* CX 445), and estimated that plants ⅔ and ⅓ as large would respectively suffer cost disadvantages of 0.6 cents and 1.8 cents per pound. CX 445. A Georgia-Pacific plant completed in 1980 similarly has a production capacity of 1 billion pounds. The plant that Formosa completed in 1982 has a capacity of 529 million pounds, but it was sized to match an existing PVC plant on the site, and Formosa was willing to sacrifice some efficiency in order to avoid the costs associated with marketing surplus VCM.[94]

In 1981, prior to the acquisition, 6.856 billion pounds of VCM were produced in the United States. Minimum efficient plant scale (eight hundred million pounds) therefore represented about 11.7 percent of total United States VCM production in that year.[95] It is unlikely that a new entrant could secure that level of sales without provoking a substantial response from incumbent firms, thereby driving prices to lower levels. Indeed, one industry document indicated that VCM "capacity additions [are] disruptive to entire industry because efficient plant size is 1 billion pounds (10% of total U.S. industry size)." RX 90Z62 *in camera; accord,* L. Wheeler, Tr. 991. One witness—a Goodrich employee—testified that a new entrant with a new plant would need to "cut prices very substantially and over a long period of time." [96]

The foregoing analysis establishes that environmental restrictions adopted in 1980 represent a significant barrier to entry into the VCM market, and that the four to five years currently required to construct a new plant or expand an existing plant constitute a substantial impediment to entry. It also establishes that minimum efficient scale—in conjunction with sunk cost effects—represents a substantial impediment to entry into the VCM market. Actual entry experience supports the conclusion that entry into the VCM market would be difficult.[97] It took Formosa four and one-half years to complete its VCM plant, and Goodrich similarly expected its proposed VCM plant to require four years of construction. *See* page 39, *supra.* Imports are not likely to constrain domestic producer pricing discretion. They accounted for only 1.6 percent of the total VCM production of domestic firms in 1981, and only 1.8 percent in 1983. CX 663E *in camera.*

B. Concentration Levels

As the number of firms in an industry declines, and industry concentration increases, *ceteris paribus,* it becomes easier for those firms to coordinate their pricing, and the likelihood of anticompetitive effects from an acquisition consequently increases as well.[98] Conversely, as the *DOJ Guidelines* indicate:

> Other things being equal, [market] concentration affects the likelihood that one firm, or a small group of firms, could successfully exercise market power * * *. As the number of firms necessary to control a given percentage of total supply increases, the difficulties and costs of reaching and enforcing consensus with respect to the control of that supply also increase.[99]

Consistent with this view, in *United States v. Philadelphia National Bank* the Supreme Court indicated that a crucial initial question in merger cases is whether the merger or acquisition at issue

> Produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, [such that] it is * * * inherently likely to lessen competition substantially * * *.[100]

The Court determined that the acquisition at issue was presumptively illegal because it would have created a bank that controlled 36 percent of the relevant market; increased two-firm concentration ("C_2") form 44 percent to 59 percent; and increased four-firm concentration ("C_4") to 78 percent. The Court observed that the presumption illegality could be rebutted by "evidence clearly showing that the merger is not likely to have such anticompetitive effects." [101] Subsequently, in *United States* v. *General Dynamics Corp.*, the Court determined that premerger four-firm concentration ratios of 43 percent and 54.5 percent in two separate relevant markets, coupled with 4.8 percentage point and 8.1 percentage

[93] IDF 268 *in camera:* Kaserman, Tr. 2472–73; L. Wheeler, Tr. 928; DiLiddo, Tr. 3290; Taylor, Tr. 2563; *but see* Disch, Tr. 858–859 (350 million to 500 million pounds). In 1981, Goodrich concluded that a "world scale" plant would have a capacity of one billion pounds. CX 44A *in camera.*

[94] Goodrich believed that Formosa might later expand that facility to bring it up to "world scale." RX 153T *in camera.*

[95] *See* Table IV, *infra.* By comparison, minimum efficient scale for PVC plants is considerably lower, representing less than 6 percent of PVC production. *See* note 85, *supra*

[96] DiLiddo, Tr. 3255–56. Demand growth is not likely to make entry on this scale more feasible. Industry members expect demand for VCM to grow at an annual rate of no more than 3 to 4 percent, approximating the rate of growth of the gross national product. IDF 315–16 *in camera;* Kienholz, Tr. 792. Moreover, incumbent firms already possess some excess capacity that could be devoted to accommodating demand growth.

The entry-deterring effects of the minimum efficient scale requirements are accentuated by the fact that VCM plants are highly specialized, with no application other than VCM production. IDF 270. Thus, an investment in an unsuccessful entry effort at minimum efficient scale will be completely lost, or "sunk." *See* IDF 270, 271, 280, 281. Both the Commission and the Department of Justice have recognized that entry efforts requiring the investment of substantial sunk costs are less likely to occur. *B.A.T. Industries, Ltd.,* 104 F.T.C. 852, 935 (1984); *DOJ Guidelines* at ¶ 3.3 n.21.

[97] Kaserman, Tr. 2480–85. Respondents argue that some currently mothballed capacity could be brought back into production in response to supracompetitive prices. For example, Shell mothballed its Norco, Louisiana VCM plant in 1982 because of the decline in demand during the 1981–1982 period. RX 428A *in camera;* RX 822A; L. Wheeler, Tr. 1040–42 *in camera.* Corrosion is a problem with respect to such plants, but if properly maintained they can be brought back into production within six months to a year. Rawson, Oral Argument at 49. However, if a plant is simply mothballed, it will become very expensive to restart within two years. Moreover, even if it is constantly inspected, and deteriorating components are immediately repaired, at substantial expense, corrosion will render it inoperable within four to six years. Kienholz, Tr. 783–84.

In any event, restarting mothballed capacity will usually constrain the pricing discretion of incumbent firms only if undertaken by a fringe firm that is not likely to be a party to a collusive arrangement. *Weyerhaeuser Co.,* 106 F.T.C. at 287–88 and n. 69. As the sixth largest VCM producer, controlling almost 9 percent of VCM practical production capacity, (*see* Table V), Shell cannot be characterized as a fringe firm.

[98] *HCA v. FTC,* 807 F.2d at 1387; *accord HCA,* 106 F.T.C. at 488–489; Scherer, *supra* note 61 at 199–200; *see also* Posner *supra* note 58 at 52–56; Stigler, *A Theory of Oligopoly,* 72 J. Pol. Econ. 44 (1964).

[99] *DOJ Guidelines* at ¶ 3.1. Several factors support this conclusion. For example, inevitable differences in cost functions—and hence in price preferences—may become more pronounced as the number of firms increases. In this situation, each firm will prefer the level of output and prices that maximizes its own profits, and the difficulty of reaching and sustaining a consensus strategy will increase. *See generally* Scherer, *supra* note 61, at 156–60; Hay, *supra* note 58, at 447; G. Stigler, *The Theory of Price* 233–34 (3d ed. 1966).

[100] *United States v. Philadelphia National Bank,* 374 U.S. 321, 363 (1963); *accord, e.g., Weyerhaeuser Co.,* 106 F.T.C. at 278.

[101] *United States* v. *Philadelphia National Bank,* 374 U.S. at 331, 363–66.

point increases in the acquiring firm's shares in those markets, were sufficient to establish a *prima facie* violation.[102]

The Commission has in the past taken the position that "four-firm market shares ["C_4"] in the range of 50 percent are sufficient to raise concern over the loss of potential competition," and therefore create a rebuttable presumption that the acquisition at issue is likely to have anticompetitive effects.[103] However, the Commission has also determined that the Herfindahl-Hirschman Index ("HHI") provides a better measure of the structural character of a relevant market than concentration ratios.[104] Its principal advantage is that it reflects not only the combined share of the largest firms, but also their shares relative to one another and to all other firms in the industry,[105] and thus provides "a useful tool in interpreting market structure evidence".[106] The Justice Department has taken the same position, and has noted that—according to an empirical study it conducted—HHIs of 1000 and 1800 correspond roughly to four-firm concentration ratios of 50 percent and 70 percent respectively.[107] A number of federal courts have also recently determned that the HHI provides a useful measure of concentration levels.[108]

Finding a *prima facie* violation of section 7 creates a rebuttable presumption of anticompetitive effects and shifts the burden of going forward with evidence to the respondent.[109] The Commission has noted, however, that—

> the analytical soundness of this evidentiary presumption is obviously weaker in cases in which C_4 falls in the 50 percent range (or HHI falls below 1000, for example) than in cases in which C_3 or C_4 exceeds 90 percent (or HHI exceeds, for example, 2500) * * * [T]he Commission will require less evidence to overcome this presumption when only moderate concentration—C_4 levels between 50–70 percent and HHI between 1000 and 1800—is found * * *[110]

More recently, the Commission has reaffirmed that although market share evidence is "an important starting point in merger analysis, it alone is not conclusive in determining the legality of a merger under section 7."[111]

Weyerhaeuser and *HCA* represent the Commission's most recent applications of section 7. In *Weyerhaeuser*, as a result of the challenged acquisition, the respondent had become the largest firm in the relevant market, with a 20.64 percent share that was seven percentage points higher than the share of the second-largest firm. Moreover, the acquisition had increased the market HHI for actual production by 211 points, from 955 to 1166, and had increased four-firm concentration from 48.4 percent to 57.8 percent. The Commission determined that these data were sufficient to "suggest a *prima facie* violation."[112] However, the Commission observed that the acquisition fell within the lower end of the mid-range of the Department of Justice Merger Guidelines, and calls for especially careful review of a number of industry characteristics in addition to concentration in order meaningfully to assess the acquisition's effect on competition.[113]

Its analysis of these other factors led the Commission to conclude that the acquisition did not violate section 7 of the Clayton Act.[114]

In *HCA*, by contrast, the Commission considered a market with an HHI of 1900 before the acquisitions at issue that increased to over 2400 after the acquisitions; as a result, four-firm concentration increased to 92 percent. Moreover, HCA's market share increased from 14 percent to 26 percent. The Commission found these figures supported "an inference of harm to competition," *ceteris paribus*, and characterized the increase in concentration "in an already concentrated market to be of serious competitive concern."[115]

1. PVC Market

In 1981, prior to the acquisition, approximately 5.242 billion pounds of bulk and suspension PVC were produced in the United States.[116] In 1983, after the acquisition had been completed, approximately 5.635 billion pounds were produced domestically.[117] The record includes three separate measures of concentration levels in the PVC market: nameplate (or "design") capacity, practical production capacity, and actual production levels.[118] Prior to the acquisition, Goodrich ranked first in all three measures, while Diamond ranked sixth in nameplate capacity,

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[102] *United States* v. *General Dynamics Corp.*, 415 U.S. 486, 494–96 (1974); *accord, e.g., FTC* v. *Warner Communications, Inc.*, 742 F. 2d 1156, 1163–64 (9th Cir. 1984) (*per curiam*); *Marathon Oil Co.* v. *Mobil Corp.*, 669 F. 2d 378, 383 (6th Cir. 1981), *cert. denied*, 455 U.S. 982 (1982); *Grumman Corp.* v. *LTV Corp.*, 665 F. 2d 10, 12–15 (2d Cir. 1981); *RSR Corp.* v. *FTC*, 602 F. 2d 1317, 1324–25 (9th Cir. 1979), *cert. denied*, 445 U.S. 927 (1980); *FTC* v. *Bass Bros. Enters., Inc.*, 1984–1 Trade Cas. (CCH) ¶66,041, at 68,609–11 (N.D. Ohio 1984).

[103] *Grand Union Co.*, 102 F.T.C. at 1054, *quoting Tenneco, Inc.*, 98 F.T.C. 464, 585–85 (1981), *rev'd on other grounds*, 689 F. 2d 346, 352 (2d Cir. 1982).

[104] *Grand Union Co.*, 102 F.T.C., at 1053–54. The Commission has thereby rejected its earlier contrary holding in *Litton Industries*, 82 F.T.C. 793, 904–7, 1010–11 and nn. 33–35 (1973). The HHI is calculated by summing the squares of the individual market shares of all the firms in the market. *HCA*, 106 F.T.C. at 488.

[105] *HCA*, 106 F.T.C. at 488; *Grand Union Co.*, 102 F.T.C. at 1053–54.

[106] *HCA*, 106 F.T.C. at 488; *see* also Stigler, *supra* note 98 at 55. It also provides a basis for estimating the degree to which a small number of firms could assess supracompetitive prices without expressly cooperating with one another. Cowling & Waterson, *Price-Cost Margins and Market Structure*, 43 Economics 267 (1970); Ordover, Sykes & Willig, *Herfindahl Concentration, Rivalry, and Mergers*, 95 Harv. L. Rev. 1857, 1865 (1982).

[107] *DOJ Guidelines* at ¶3.1. However, the presence of a single very large firm will substantially increase the HHI for a given industry, *ceteris paribus*. *See, e.g.*, American Bar Association, *Antitrust Law Developments* 161 n. 115 (2d ed. 1984).

[108] *Tenneco, Inc.* v. *Federal Trade Commission*, 689 F. 2d 346, 359 (2d Cir. 1982) (Mansfield, J., dissenting); *Christian Schmidt Brewing Co.* v. *G. Heileman Brewing Co.*, 600 F. Supp. 1326, 1329–30 n. 3 (E.D. Mich.), *aff'd*, 753 F. 2d 1354 (6th Cir.), *cert. dismissed*, 105 S. Ct. 1155 (1985); *United States* v. *G. Heileman Brewing Co.*, 563 F. Supp. 643, 644 n. 3 (D. Del. 1983); *Vial* v. *First Commerce Corp.*, 1983 Trade Cas. (CCH) 65,692 (E.D. La. 1983); *Marthon Oil Co.* v. *Mobil Corp.*, 530 F. Supp. 315, 323 n. 15 (N.D. Ohio), *aff'd*, 669 F. 2d 378 (6th Cir. 1981), *cert. denied*, 455 U.S. 982 (1982) (not used, however). *But see United States* v. *Black & Decker Mfg. Co.*, 430 F. Supp. 729, 748 n. 38 (D. Md. 1976).

[109] *United States* v. *Citizens & Southern National Bank*, 422 U.S. 86, 120 (1975); *Kaiser Aluminum & Chemical Corp.*, v. *FTC*, 632 F. 2d 1324, 1340 and n. 12 (7th Cir. 1981); *Weyerhaeuser Co.*, 106 F.T.C. at 280 n. 50.

[110] *Grand Union Co.*, 102 F.T.C. at 1055; *see FTC Statement*, ¶4516 at 6901–4. The *DOJ Guidelines* similarly characterize markets with HHI levels between 1000 and 1800 as moderately concentrated, and indicate that the Department of Justice will ordinarily challenge mergers in such markets that increase HHI levels by more than 100 points. *DOJ Guidelines* at ¶3.11. However, the presumption of anticompetitive effects arising from an acquisition that produces an HHI within the 1000–1800 range can be rebutted by evidence concerning any of a variety of other structural factors. *DOJ Guidelines* at ¶3.11(c).

[111] *AMI*, 104 F.T.C. at 200; *accord Weyerhaeuser Co.*, 106 F.T.C. at 278; *see also HCA*, 106 F.T.C. at 474.

[112] *Weyerhaeuser*, 106 F.T.C. at 280.

[113] *Id.*

[114] *Id.*

[115] *HCA*, 106 F.T.C. at 488.

[116] *See* Table I, *infra*.

[117] *See* Table II, *infra*.

[118] A plant's nameplate capacity is the level of capacity that it is designed to achieve, while its practical production capacity is its effective production capacity. CPF 5.22 *in camera*. Practical production capacity thus provides a better measure of actual production constraints. Actual production levels may occasionally exceed capacity estimates if, for example, a firm chooses to reduce inventory levels or produce at a point where marginal cost is very high.

The Justice Department has taken the position that if the relevant product is branded or relatively differentiated, dollar sales provide a better measure of concentration levels. By contrast, if the relevant product is relatively homogeneous, physical capacity may provide a better measure. *DOJ Guidelines* at ¶ 2.4. In this case, VCM is homogeneous, while PVC is more heterogeneous. As a result, two capacity measures and an actual production (in pounds rather than dollars) measure of concentration have been used.

fourth in practical production capacity, and fifth in actual production. IDF 34–35. The following tables depict the market shares and ranks of the eighteen firms in the United States bulk and suspension PVC market—for each of the three concentration measures—prior to the acquisition, and the same data for the fourteen firms still in the industry as of January 1984.

TABLE I.—BULK AND SUSPENSION PVC MARKET SHARES BEFORE THE ACQUISITION (PERCENTAGES) (UNITED STATES) [119]

Firm	Nameplate capacity (Jan. 1982)	Practicial production capacity (Jan. 1982)	Actual production (1981)
Goodrich	18.51 (1st)	17.79 (1st)	16.1 (1st).
Tenneco Polymers	12.35 (2nd)	11.72 (2nd)	12.9 (2nd).
Georgia Pacific	9.94 (3rd)	8.96 (5th)	7.8 (6th).
Shintech	9.37 (4th)	10.75 (3rd)	10.5 (3rd).
Occidental Chemical	8.60 (5th)	8.30 (7th)	7.0 (7th).
Diamond Shamrock:			
Deer Park Plant #5	3.98	4.28	
Deer Park Plants #1–4X	3.08	3.21	
Delaware City Plant	1.28	1.49	
Total	8.33 (6th)	8.99 (4th)	8.3 (5th).
Conoco	8.31 (7th)	8.73 (6th)	8.6 (4th).
Borden	6.25 (8th)	6.27 (8th)	6.8 (8th).
Air Products and Chemicals	5.11 (9th)	4.63 (9th)	5.7 (9th).
CertainTeed	2.66 (10th)	3.28 (10th)	4.3 (10th).
Formosa Plastics	2.56 (11th)	2.93 (11th)	1.9 (14th).
Stauffer Chemical	1.99 (12th)	1.79 (12th)	3.0 (11th).
GenCorp	1.90 (13th)	1.78 (14th)	2.6 (12th).
Ethyl	1.70 (14th)	1.79 (12th)	2.0 (13th).
Great American Chemical Corp	0.99 (15th)	0.90 (15th)	0.3 (17th).
Keysor-Century Corp	0.71 (16th)	0.75 (16th)	0.3 (17th).
Pantasote	0.71 (16th)	0.67 (17th)	1.4 (15th).
Talleyrand Chemicals			0.6 (16th).
Total	7.043 billion pounds	6.700 billion pounds	5.242 billion pounds.

[119] CX 662D–G *in camera*; CX 664–O–V *in camera*; IDF 34–38 *in camera*.

TABLE II.—BULK AND SUSPENSION PVC MARKET SHARES AFTER THE ACQUISITION (PERCENTAGES) (UNITED STATES) [120]

Firm	Nameplate capacity (Jan. 1984)	Practical production capacity (Jan. 1984)	Actual production (1983)
Goodrich	20.6 (1st)	19.4 (1st)	18.4 (1st).
Tenneco Polymers	12.0 (2nd)	11.4 (2nd)	11.8 (3rd).
Georgia Pacific	11.0 (3rd)	10.3 (6th)	8.4 (6th).
Formosa Plastics	10.5 (4th)	11.0 (3rd)	10.2 (5th).
Borden	10.2 (5th)	10.1 (7th)	7.7 (7th).
Conoco	9.9 (6th)	10.4 (4th)	11.0 (4th).
Shintech	9.1 (7th)	10.4 (4th)	12.7 (2nd).
Occidental Chemical	6.2 (8th)	6.1 (8th)	5.6 (8th).
Air Products and Chemicals	5.0 (9th)	4.8 (9th)	3.6 (10th).
CertainTeed	2.6 (10th)	3.2 (10th)	4.0 (9th).
GenCorp	1.7 (11th)	1.6 (11th)	1.7 (12th).
Keysor-Century Corp	0.7 (12th)	0.7 (12th)	0.7 (13th).
Pantasote	0.7 (12th)	0.7 (12th)	0.1 (14th).
Ethyl	0.0	0.0	2.1 (11th).
Total	7.251 billion pounds	6.901 billion pounds	5.635 billion pounds.

[120] CX 664A–V *in camera*; IDF 34–38 *in camera*.

The acquisition generated increases in all three concentration measures. First, it increased the HHI for nameplate capacity by approximately 113 points, to 1098 after the acquisition. IDF 49. After Diamond closed its remaining Deer Park Plants, the HHI for nameplate capacity increased by another 53 points to 1151.[121] By 1985, the HHI for nameplate capacity had increased by an additional 52 points to 1203.[122]

Second, the acquisition increased the HHI for practical production capacity by 112 points, from 967 to 1079. IDF 49. After Diamond closed its Deer Park plants, the HHI increased to 1130.[123] After Diamond closed or sold its remaining plants, the HHI increased by an additional 132 points to 1211.[124] Third and finally, the acquisition—coupled with Diamond's closure of its remaining PVC plants—increased the HHI for actual production by 221 points, from 910 to 1131. The acquisition alone

[121] CPF 5.27 *in camera*. This calculation is based upon treating the Delaware City facility as an independent entity.

[122] IDF 54. The use of post-acquisition structural evidence as a basis for evaluating the likelihood of anticompetitive effects from a merger or acquisition is well-established, as respondents recognize. *See* Rawson, Oral Argument at 46. The use of post-acquisition performance evidence is discussed in Part V, *infra*.

[123] CPF 5.28 *in camera*. This calculation is similarly based upon treating the Delaware City facility as a separate entity.

[124] CPF 5.28 *in camera*.

probably increased the HHI for actual production by approximately 110 points, to approximately 1020.[125]

If the later closing of Diamond's other Deer Park plants is not attributed to the acquisition, it increased Goodrich's share of nameplate PVC capacity from 18.5 percent to 22.5 percent, and its share of practical production capacity from 17.8 percent to 22.1 percent. IDF 52 *in camera*; *see* Table I, *supra*. Under the more traditional rubric of earlier cases, the acquisition increased four-firm concentration from 50.2 percent to 54.2 percent in nameplate capacity; from 49.3 percent to 53.6 percent in practical production capacity; and from 48.1 percent to over 50 percent (estimated) in actual production. *See* Table I, *supra*. The following table illustrates contemporaneous industrywide changes in both HHI levels and four-firm concentration levels:[126]

[125] IDF 53 *in camera*, *citing* CX 661Z-16 *in camera*. The record does not provide an explicit basis for assessing the effect of the acquisition of Deer Park plant number 5 alone upon the HHI for actual production levels because it does not indicate the share of actual production for which plant number 5 accounted. Kaserman, Tr. 2271. However, as Table I indicates, Deer Park Plant number 5 accounted for approximately one-half of Diamond's nameplate and practical PVC production capacities. The HHI increase in actual production actually attributable to the Goodrich acquisition is therefore probably only half of the 221 figure—assuming that plant number 5 also accounted for one-half of Diamond's actual production—or approximately 110.

[126] The concentration data in Table III differ to some degree from the data cited in the text because of other events in the industry. Because the acquisition occurred in January 1982, the 1983 capacity data and the 1982 production data, denoted by asterisks, are the first to reflect the effects of the acquisition.

TABLE III.—CHANGES IN BULK AND SUSPENSION PVC HHI AND FOUR-FIRM CONCENTRATION 1980–1985

Concentration measure	1980	1981	1982	1983	1984	1985
Nameplate capacity [127]	897	928	985	* 1088	1156	1203
	(49.2)	(48.3)	(50.2)	(53.3)	(54.1)	(56.1)
Practical production capacity [128]	871	940	967	* 1058	1126	
	(47.2)	(48.2)	(49.2)	(52.9)	(52.2)	
Actual production [129]	851	910	* 1131	1065		
	(45.6)	(48.1)	(58.1)	(53.8)		

[127] CX 664F-G *in camera*. The 1985 HHI for nameplate capacity is based on January 1985 capacity estimates, which were derived in turn by adjusting January 1984 capacity to reflect Shintech's expansion of its suspension PVC plant to 1 billion pounds of capacity during 1984; GenCorp's discontinuance of its PVC business in September 1984; and Pantasote's discontinuance of its PVC business in the fourth quarter of 1984. CPF 5.69 *in camera*.

[128] CX 664M-N *in camera*.

[129] CX 664V *in camera*.

As the foregoing data suggest, the PVC market was not particularly concentrated prior to the acquisition, whether judged from the perspective of capacity or that of actual production levels. Under the *DOJ Guidelines*, the market after the acquisition would be classified as "moderately concentrated," but only by the barest of margins. Moreover, the 113 point, 112 point, and estimated 110 point changes in nameplate capacity, practical production capacity, and actual production barely exceed the 100 point threshold specified in the *DOJ Guidelines*.[130] The HHI figures also create only a weak presumption of competitive injury under previous court and Commission cases, particularly if—as the respondents maintain—the closure of the other Deer Park plants and the Delaware City plant should not be attributed to the acquisition. In *Weyerhaeuser*, for example, the Commission considered an acquisition that had increased the relevant HHI for actual production by about 100 points *more* than this acquisition to a level about 100 points *higher* than the post-acquisition HHI actually attributable to the acquisition in the PVC market. The Commission concluded that these effects were barely sufficient to create a weak presumption of anticompetitive effects.[131] *A fortiori*, the concentration data for the PVC market create an even weaker presumption of anticompetitive effects. Even if the closure of the other Deer Park plants *is* attributed to the acquisition, the changes in HHI levels are barely comparable to those that occurred in *Weyerhaeuser*. As a result, the evidence from other structural factors needed to rebut that presumption need not be as strong as it was in *Weyerhaeuser*.

2. VCM Market

The record also includes market share data for nameplate capacity, practical production capacity, and actual production levels for VCM. Before the acquisition, Diamond ranked third along all of these dimensions, while Goodrich ranked third in nameplate capacity (tied with Diamond and Georgia Pacific), fifth in practical production capacity, and fourth in actual production. IDF 250 *in camera*, 251 *in camera*. The following tables depict the market shares of the twelve firms in the United States VCM market, and their ranks, for each of the three concentration measures before the acquisition, and for the nine firms still in the industry as of January, 1984:

[130] In her concurring and dissenting opinion, Commissioner Azcuenaga states that the acquisition increased the actual production HHI by 221 points, to 1131, thereby placing the acquisition in the "moderately concentrated" range under the *DOJ Guidelines*. Opinion of Azcuenaga, Commissioner (*hereinafter Azcuenaga Opinion*), at 1. However, this assumes that the closure of Deer Park Plants numbers 1-4X, and the Delaware City plant, should be attributed to the acquisition, and the respondents vigorously dispute that assumption. The acquisition itself probably actually increased the HHI for actual production by only 110 points. *See* page 55 and note 125, *supra*.

[131] *Weyerhaeuser Co.*, 106 F.T.C. at 280.

TABLE IV.— VCM MARKET SHARES BEFORE THE ACQUISITION (PERCENTAGES) (UNITED STATES)[132]

Firm	Nameplate capacity (Jan. 1982)	Practical production capacity (Jan. 1982)	Actual production (1981)
Dow Chem	22.52 (1st)	21.92 (1st)	22.85 (1st).[133]
Shell Oil	16.39 (2nd)	15.61 (2nd)	17.43 (2nd).
Diamond Shamrock	10.64 (3rd)	12.06 (3rd)	13.44 (3rd).

TABLE IV.— VCM MARKET SHARES BEFORE THE ACQUISITION (PERCENTAGES) (UNITED STATES)[132]—Continued

Firm	Nameplate capacity (Jan. 1982)	Practical production capacity (Jan. 1982)	Actual production (1981)
Goodrich	10.64 (3rd)	10.48 (5th)	11.30 (4th).
Ga. Pacific	10.64 (3rd)	11.27 (4th)	6.91 (6th).
PPG Industries	9.59 (6th)	9.41 (6th)	7.57 (5th).
Borden	6.48 (7th)	5.32 (8th)	4.82 (8th).
Conoco	6.39 (8th)	7.33 (7th)	6.79 (7th).
Ethyl	3.51 (9th)	3.38 (9th)	2.90 (9th).
Formosa Plas	3.19 (10th)	3.22 (10th)	2.76 (10th).
Uniroyal			1.75 (11th).
Stauffer Chem			1.33 (12th).
Imports (Excl. Dow)			0.14.
Total	9.3965 billion pounds	8.873 billion pounds	6.856 billion pounds.

[132] CX 662A–C *in camera*; IDF 250–261 *in camera*.
[133] This share includes imports from Dow Canada accounting for 1.5 percent of the market.

TABLE V.— VCM MARKET SHARES AFTER THE ACQUISITION (PERCENTAGES) (UNITED STATES) [134]

Firm	Nameplate capacity (Jan. 1984)	Practical production capacity (Jan. 1984)	Actual production (1983)
Dow Chemical	23.34 (1st)	22.55 (2nd)	28.25 (1st).[135]
Goodrich	22.61 (2nd)	23.73 (1st)	22.26 (2nd).
Georgia Pacific	11.31 (3rd)	11.87 (3rd)	7.89 (6th).
PPG Industries	10.20 (4th)	9.91 (4th)	9.01 (5th).
Shell Oil	9.50 (5th)	8.96 (6th)	12.85 (3rd).
Formosa Plastics	9.37 (6th)	9.67 (5th)	9.02 (4th).
Borden	6.89 (7th)	5.60 (8th)	2.65 (8th).
Conoco	6.78 (8th)	7.71 (7th)	6.99 (7th).
Ethyl	0.0	0.0	1.07 (9th).
Total	8.844 billion pounds	8.427 billion pounds	7.033 billion pounds.

[134] CX 663A–F *in camera*. The decline in Shell's share occurred because it closed a plant (*see* note 97, *supra*), while the increase in Formosa's share occurred because it opened a plant after approximately five years of construction (*see* pages 34–35, *supra*).
[135] This share includes 128,300 pounds in imports from Dow Canada.

The acquisition increased the HHI for nameplate VCM capacity by 226 points, from 1303 to 1529. IDF 262. By January 1985 the HHI had increased to 1632. IDF 266. The acquisition increased the HHI for practical production capacity by 253 points, from 1299 to 1552. IDF 262. By January 1985 the HHI had increased to 1650. IDF 266. The acquisition increased the HHI for actual production by 304 points, from 1359 to 1663. IDF 262. The following table illustrates contemporaneous industrywide changes in both HHI levels and four-firm concentration levels: [136]

TABLE VI.—CHANGES IN VCM, HHI AND FOUR-FIRM CONCENTRATION 1981–1984

Concentration measure	1981	1982	1983	1984	1985
Nameplate capacity [137]	1318	1313	1433*	1559	1632
	(61.66)	(60.19)	(66.89)	(67.46)	(____)
Practical production capacity [138]	1293	1299	1468*	1575	
	(61.92)	(60.86)	(68.49)	(68.06)	
Actual production [139]	1330	1761*	1741		
	(65.02)	(76.14)	(72.39		

[137] CX 663A–B *in camera*.
[138] CX 663C–D *in camera*.
[139] CX 663E–F *in camera*.

The foregoing data indicate that the VCM market was substantially more concentrated prior to the acquisition than the PVC market, and that the acquisition produced a substantially greater increase in concentration in the VCM market. Under the *DOJ Guidelines*, the VCM market falls within the upper half of the moderately concentrated range after the acquisition for all three concentration measures. Moreover, the acquisition increased HHI levels along all three measures by 226 to 304 points, well above the 100 point threshold specified by the *DOJ Guidelines*. Under the more traditional rubric of earlier cases, the acquisition increased the four-firm concentration ratio from 60.2 percent to 70.8 percent in nameplate capacity; from 60.9 percent to 71.3 percent in practical production capacity;

[136] The concentration data in Table VI differ to some degree from the data cited in the text because of other events in the industry. The acquisition occurred in January 1982. The 1983 capacity data and the 1982 production data, denoted by asterisks, are therefore the first to reflect the effects of the acquisition.

and from 65 percent to 72.6 percent in actual production. Furthermore, Goodrich increased its share from 10.6 percent to 21.3 percent in nameplate capacity; from 10.5 percent to 22.5 percent in practical production capacity; and from 11.3 percent to 24.7 percent in actual production. *See* Table IV, *supra*. These data are well above those that created a presumption of illegality in *United States v. General Dynamics* and *Weyerhaeuser*. *See* pages 44–48, *supra*. In short, the concentration data create a relatively strong presumption of anticompetitive effects in the VCM market, and relatively strong evidence from other factors is needed to rebut that presumption.

C. Other Structural Factors

1. Product Homogeneity.

The extent to which products in a given industry are homogeneous helps to determine the likelihood of anticompetitive effects from an acquisition. As the *DOJ Guidelines* indicate:

> In a market with a homogeneous and undifferentiated product, a cartel need establish only a single price—a circumstance that facilitates reaching consensus and detecting deviation. As the products which constitute the relevant product market become more numerous, heterogeneous, or differentiated, however, the problems facing a cartel become more complex. Instead of a single price, it may be necessary to establish and enforce a complex schedule of prices corresponding to gradations in actual or perceived quality attributes among the competing products.[140]

Two dimensions of product heterogeneity are particularly relevant.[141] First, differences in product quality may make price differentials necessary to produce a stable market equilibrium, and achieving a consensus on such differentials is likely to be difficult.[142] Moreover, maintaining a consensus becomes more difficult when it must cover full lines of products of varying qualities, because a firm can disguise its efforts to cheat more easily.[143] Second, if transportation costs represent a substantial proportion of total product value, and if firms are located substantial distances from one another, coordination efforts must minimize or eliminate the competitive impact of these differences.[144]

a. *PVC market.* The record provides mixed evidence concerning PVC heterogeneity. Judge Howder characterized the bulk and suspension PVC market as a "commodity" market, where purchasers generally select the lowest priced resin suitable for a particular end use. IDF 90. However, two factors—the presence of a variety of different grades of PVC resin (with perceived differences within particular grades), and the complications arising from differing transportation costs—establish that PVC resin is in fact considerably more heterogeneous. First, there are three broad categories of PVC resin—pipe, general purpose, and specialty. Each category includes a number of PVC resin grades that are distinguished by differences in particle size, molecular weight, and purity.[145] Some PVC resin purchasers perceive differences in a given grade from one producer to another, or even from one plant of a given firm to another. As a result, they insist upon "qualifying" a particular PVC resin grade before purchasing it from a particular PVC producer.[146] The results of the testing, or subsequent use of the resin, on occasion lead purchasers to conclude that the resin grades involved cannot be used.[147] The need to qualify not only *grades* of resin, but also the grade of resin produced by a *particular* firm, makes PVC buyers reluctant to switch suppliers without price or quality concessions.

Pipe, siding and calender grades of PVC resin, also characterized as "commodity" grades, account for about 75 percent of bulk and suspension PVC sales.[148] Service with respect to these grades is considered to be relatively unimportant. The remaining 25 percent of bulk and suspension PVC resins are sold in several grades that differ in particle size, molecular weight, and purity as a function of purchaser end-use requirements.[149] Nevertheless, it is difficult to charge a significant price premium for any given grade of PVC. As one witness testified,

> there is a degree of customer loyalty in this business, but I would characterize it more as one that will give you an opportunity to *meet the price* in most cases rather than a willingness to pay a premium.[150]

Commissioner Azcuenaga relies upon evidence of this sort to conclude that PVC resin buyers are willing to switch suppliers of a given grade in response to small price differences. *Azcuenaga Opinion* at 8. But switching suppliers of a given grade entails signficant costs. *See* page 88, *infra*. Moreover, the fact that a given PVC grade may be relatively homogeneous does not alter the fact that different PVC grades differ significantly from one another.[151]

Second, transportation cost differences are likely to complicate the determination and enforcement of consensus prices. Although several manufacturers operate PVC resin plants along the Gulf Coast, in Texas, Louisiana and Mississippi, others operate PVC resin plants in widely scattered locations. For example, as of October 1983 Air Products' only plant was located in Pensacola, Florida, while Borden's largest plant was in Illinois, and it operated another substantial plant in Massachusetts. Similarly, as of October 1983 Conoco, Formosa, Georgia Pacific, Occidental, and Tenneco respectively operated substantial plants in Oklahoma; Delaware; New Jersey and Pennsylvania; and New Jersey. Finally, as noted above, Goodrich itself operates substantial plants in Ohio, Illinois, California, Kentucky, and New Jersey.[152]

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[140] *DOJ Guidelines* at ¶3.411; *accord, e.g., HCA v. FTC*, 807 F2d at 1390; *United States v. Container Corp. of America*, 393 U.S. 333, 337 (1969); *United States v. FMC Corp.*, 306 F.Supp. 1106, 1111–12, 1143 (E.D. Pa. 1969); *FTC Statement*, ¶4516 at 6901–4.

[141] *See generally* Scherer, *supra* note 61, at 200–03; Posner, *supra* note 58, at 51.

[142] Scherer, *supra* note 61, at 201. If a significant level of product differentiation exists, each firm will probably confront significantly different demand and marginal revenue curves. Therefore, even if its marginal cost function is identical to those of the other firms in the industry, each firm will prefer to operate at a different point on that function, and hence will prefer a different price than its rivals. *Id.* at 158.

[143] *See* Hay, *supra* note 58, at 448.

[144] Scherer, *supra* note 61, at 201; Haddock, *Basing-Point Pricing: Competitive v. Collusive Theories*, 72 Am. Econ. Rev. 289 (1982); *see DOJ Guidelines* at ¶3.413. For a general discussion of product differentiation, *see* Scherer, *supra* note 61, at 375–405.

[145] Disch, Tr. 632, 634–35; Becker, Tr. 1255–59; Klass, Tr. 4333; RX 2Z11–15.

[146] Becker, Tr. 1330–31, 1332–34; RX 875B *in camera*; RX 222D–E *in camera*; RX 589T; RX 1049A *in camera*; RX 258A *in camera*; RX 537B; RX 541A; *see* H. Wheeler, Tr. 1747–48.

[147] RX 2211 *in camera*; RX 260B *in camera*; RX 545A; RX 1041A.

[148] Weber, Tr. 1795.

[149] IDF 85. For example, medical grade resins are considered to be specialty grades, and command a small price premium over commodity grades. IDF 88. Many customers find technical services offered in conjunction with the sale of specialty grades to be useful. IDF 89.

[150] Schaefer, Tr. 1203 (emphasis added); *accord* Becker, Tr. 1330–1332.

[151] The crucial point about product heterogeneity is that it substantially complicates the determination and enforcement of consensus prices. Instead of establishing a single price for a single homogeneous product, firms must establish and maintain a whole series of prices for a whole series of product grades.

[152] RX 1204G *in camera*; RX 1168A-B *in camera*. Bulk and suspension PVC is generally sold on a delivered price basis (Diamond Admission 475 (CX 6T); Goodrich Admission 432 (CX 4Z28), but it is not clear from the record whether the delivered price is *uniform* throughout the relevant geographic market. If delivered prices are not uniform, then detecting cheating becomes considerably more difficult.

As Commissioner Azcuenaga points out (*Azcuenaga Opinion* at 10), the relevant geographic market is national rather than regional. However,

Continued

b. *VCM Market.* The VCM market is substantially more homogeneous than the PVC market. VCM is produced in only one grade, and there are only minor trace differences in impurity levels from one firm's product to another; there is no customized VCM production. IDF 283, 285. Diamond and Goodrich admit that VCM is an essentially fungible product.[153] Moreover, all except one VCM plant are located along the Gulf Coast, in either Texas or Louisiana. IDF 284 *in camera*. As a result, transportation costs are not a significant source of product differentiation. Furthermore, the VCM industry is technologically stable; significant process or product technological changes are unlikely to occur over the next few years. IDF 285. In addition, VCM firms secure product from one another through exchanges, tolling agreements, and purchases, all for the purpose of resale;[154] that factor supports the conclusion that the product is homogeneous. As one witness testified:

> Most people would say you can't tell [VCM produced by different American manufacturers] apart. It is a true commodity chemical.[155]

2. Price Elasticity of Demand

The price elasticity of demand for a product measures the degree to which a change in its price will produce a change of opposite sign in the quantity of the product that is demanded.[156] As the price elasticity of demand for a product declines, the degree to which an increase in that product's price can be sustained without losing a significant number of sales increases, for two reasons. First, industry firms will find it easier to collude profitably, because an effort to raise prices to supracompetitive levels will not induce as many buyers to switch their purchases to alternative products.[157] Second, industry firms will have a greater incentive to collude, because the additional revenue that any given price increase produces will increase. In particular, when the price elasticity of demand is less than one—with costs held constant—an industrywide price increase will increase rather than reduce industrywide profits.[158]

The likelihood of anticompetitive effects from an acquisition thus increases as the price elasticity of demand for the product at issue declines.[159] Both PVC and VCM are intermediate products, used as inputs in manufacturing final products. As a result, their respective price elasticities increase as (1) the degree to which other inputs can be substituted for them increases; (2) the proportion of total costs for which each accounts increases; and (3) the price elasticity of demand for PVC end products and PVC resin—the products for which they are respectively used—increases.[160]

a. *PVC Market.* Three factors establish that the price elasticity of demand for bulk and suspension PVC resin is relatively low. First, there are no practical substitutes for PVC resin in manufacturing PVC products. IDF 95. PVC resin is the primary raw material input for PVC end use products, and it "imparts essential properties to the product." Much of the fabrication equipment used for bulk and suspension PVC end use products can process only bulk or suspension PVC resins.[161]

Second, with the exception of PVC pipe, bulk and suspension PVC resins account for relatively small proportions of the cost of finished PVC products. All PVC resins must be compounded before they are processed, and at that stage, additives such as heat and light stabilizers, impact modifiers, plasticizers and pigments are added.[162] A variety of manufacturing processes—including extrusion, calendering, blow molding, injection molding and compression molding—must then be used to convert PVC compounds into finished PVC products. IDF 96. The cost of PVC resin accounts for about 55 to 60 precent of the cost of PVC pipe sold to distributors, and a smaller percentage of its final cost installed.[163] However, it accounts for much lower percentages of the cost of all other finished PVC products. For example, it accounts for only about 25 percent of the cost of vinyl siding sold to distributors, and only about 5 percent of its final cost installed.[164] Similarly, it represents only about 13 to 14 cents of the cost of a finished phonograph record. IDF 186–188 *in camera;* Disch, Tr. 659. Finally, it accounts for only a small percentage of the cost of most PVC end products manufactured from calendered PVC resin. IDF 193. For example, it represents 5.6 percent of the retail price of a $7.99 vinyl shower curtain, and 4.5 percent of the retail price of a $1.79 vinyl shower cap.[165] Because there are no substitutes for PVC resin in fabricating PVC end-use products, and because PVC resins generally account for only small percentages of the final costs of fabricating those products, the demand for bulk and suspension PVC resin is less price elastic than the demand for PVC end use products.[166]

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transportation cost differences need not be large enough to create regional markets in order to complicate the task of developing a single consensus price, particularly given the fact that PVC plants are scattered all over the country.

[153] Goodrich Admission 465 [CX 4Z33]; Diamond Admission 505 [CX 6U]; Taylor, Tr. 1565; Klass, Tr. 5363.

[154] CPF 24.09, *citing, e.g.*, CX 557Z11 *in camera*; L. Wheeler, Tr. 972–75 *in camera*; CX 88 *in camera*.

[155] Keinholz, Tr. 813. Respondents nevertheless describe VCM as "commercially heterogeneous" because of differences in sales terms from one producer to another, including price, credit terms, method of delivery (pipleline, rail tank car, or tolling arrangement), and contract length (short-term, long-term, or spot). IDF 286 *in camera*; RPF 403 *in camera*. These factors relate to industry performance, rather than structure, however, and performance factors are discussed in Part V, *infra*. In any event, as the Commission has previously indicated, "agreements as to all aspects of competition are not necessary for effective collusion to take place and to have a negative impact on competition." *HCA*, 106 F.T.C. at 508; *accord Catalana, Inc. v. Target Sales, Inc.*, 446 U.S. 648–650 (1980) (agreement to refuse to extend credit *per se* illegal).

[156] More formally, the price elasticity of demand can be expressed as the absolute value of the product of (1) price divided by quantity, and (2) quantity demanded differentiated with respect to price. *E.g.*, Scherer, *supra* note 61, at 157 n. 13.

[157] *HCA v. FTC*, 807 F.2d at 1388; *HCA*, 106 F.T.C. at 499.

[158] *See HCA v. FTC*, 807 F.2d at 1388. A monopolist will ordinarily raise prices until the price elasticity of demand is greater than one. At that point, an increase in prices may or may not increase profits, depending upon whether costs are increasing faster or more slowly than revenues. Kaserman, Tr. 2354–55, 2363–64.

[159] *HCA v. FTC*, 807 F.2d at 1388, 1389; *Marathon Oil Corp. v. Mobile Oil Corp.*, 669 F.2d 378, 381 (6th Cir. 1981), *cert. denied*, 455 U.S. 982 (1982); *FTC Statement*, ¶4516 at 6901–3; *see also United States v. Container Corp. of America*, 393 U.S. at 337; *Wall Products Co. v. National Gypsum Co.*, 326 F. Supp. 295, 300 (N.D. Cal. 1971).

[160] *E.g.*, M. Friedman, *Price Theory* 158 (1976); IDF 287, *citing* Kaserman, Tr. 2369–71.

[161] H. Wheeler, Tr. 1751–52.

[162] For example, flexible PVC compounds used to manufacture wire, cable and flexible sheeting are produced by adding plasticizers to the resins. As a result, they frequently contain only 50 to 70 percent PVC resin by weight. By contrast, rigid PVC compounds do not contain plasticizers, and therefore contain as much as 80 to 95 percent resin by weight. IDF 96; Disch, Tr. 659.

[163] Yu, Tr. 2104; Disch, Tr. 663.

[164] IDF 163 *in camera;* Belt, Tr. 2026–27, 2040–41 *in camera;* CX 756Z59. Similarly, PVC resin accounts for only 15 to 20 percent of the cost of vinyl floor tiles (Disch, Tr. 673–74; IDF 168), and for no more than 30 to 50 percent of the cost of the PVC compounds used to fabricate bottles and wire and cable insulation. Becker, Tr. 1305–07, 1318–19; IDF 178; Disch, Tr. 660–61. It accounts for 15 percent of the price of vinyl window fabricators, and only 3 percent of the price of installed vinyl windows. Belt, Tr. 2058–61 *in camera*.

[165] IDF 193; DiLiddo, Tr. 3376–79.

[166] Kaserman, Tr. 2375–78.

Third, although the price elasticity of demand for different finished PVC products varies substantially, it is relatively low for most such products. It is lowest in the wire and cable segment, the packaging film and sheet segment, the phonograph record segment, and the medical end use segment. These segments together account for 21 to 23 percent of total domestic PVC consumption. *See* pages 18–19 and note 42, *supra*. The price elasticity of demand for PVC pipe, siding, floor tile, and window frames is higher because of competition from products manufactured from alternative materials, but is still relatively low. For example, a 1983 Goodrich analysis indicated:

> PVC pipe manufacturers appear to have plenty of room for price increases before approaching the price levels of most competing materials. (Even if the prices were identical, PVC would still have the added advantage of lower installed cost.)

CX 247A *in camera*. These segments together account for 53 to 55 percent of total domestic PVC consumption. *See* pages 18–19 and note 42, *supra*. Finally, the price elasticity of demand for rigid and flexible calendered products and bottles is considerably higher because of competition from products manufactured from alternative materials. These segments together account for 21 to 27 percent of total domestic PVC consumption. In short, the price elasticity of demand for products accounting for 73 to 79 percent of total domestic PVC consumption is relatively low.

On balance, the price elasticity of demand for most PVC resins appears to be relatively low. There are no practical substitutes in manufacturing PVC products; PVC resin generally accounts for only a small percentage of the final prices of those products; and the price elasticity of demand for most PVC end products is relatively low. One witness confirmed that for the bulk and suspension PVC market overall, there was very little price sensitivity,[167] and another stated that PVC is not a price elastic market.[168]

b. *VCM Market.* The price elasticity of demand for VCM is very low, on the basis of the three criteria discussed *supra*. IDF 287, 288. First, no other input can be substituted in producing PVC.[169] As a result, VCM's price elasticity of demand is necessarily lower than that of PVC.[170] Second, the price elasticity of demand for PVC is itself relatively low. The third criterion is less conclusive; VCM accounts for 50 to 60 percent of the cost of producing PVC.[171] When considered together, these three criteria indicate that the price elasticity of demand for VCM is lower than that of PVC resin, and hence very low in an absolute sense. This analysis is consistent with the views of a number of Goodrich employees and trial witnesses that the demand for VCM is "absolutely inelastic."[172]

3. Cost Functions

The similarity of cost functions among industry firms also affects the likelihood of anticompetitive effects from an acquisition. If cost functions vary widely from one firm to another, each will prefer a different industry price level, and developing a collusive consensus price will consequently be more difficult.[173] If there are only a few firms in the industry, cost differences nevertheless may not prevent firms from accepting price or output levels somewhat different from their optimal levels.

a. *PVC Market.* PVC production costs vary significantly among producers. These cost differences occur in two of three broad cost categories: (1) The cost of converting VCM into PVC; and (2) the cost of transporting PVC to purchasers.[174] First, PVC production costs differ significantly from one firm to another. It is true that the technology needed to produce PVC is widely available to all producers, and no significant patents impede production by any particular firm. IDF 195. Moreover, the clear trend in the industry has been toward larger reactors. A Goodrich employee and another witness estmated that raw materials efficiency in these larger reactors is close to 100 percent.[175] Several industry witnesses testified that producer manufacturing costs using large reactors were similar,[176] and about two-thirds of installed capacity is in the form of larger reactors. IDF 198; Disch. Tr. 641.

Nevertheless, the remainder of industry capacity is in the form of smaller reactors that produce a variety of specialty resins. As a result, production costs vary significantly from one PVC resin grade to another.[177] For example, pipe resins are usually produced in highly efficient large reactors, and require little or no technical customer service. RX 34R; Klass, Tr. 4322. By contrast, specialty resins are costlier to produce, because

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[167] Becker, Tr. 1325–28; *accord* CX 297z1–Z2 *in camera*.

[168] Schaefer, Tr. 1141; *accord* CX 295Z53–Z54 *in camera*. Respondents' expert testified that very likely were there to be a sustained anticompetitive price increase in PVC, there would be a substantial degree of substitution. Klass, Tr. 4151. However, most of the record evidence supports our conclusion that the price elasticity of demand for PVC is relatively low.

[169] Kaserman, Tr. 2484; Diamond Admission 57 (CX 6D).

[170] Kaserman, Tr. 2484–85; Klass, Tr. 4003–4006, 4533.

[171] In response to a question at oral argument from then-Acting Chairman Calvani, counsel for Goodrich indicated that in 1984, the cost of VCM represented 55.6 to 62.3 percent of the cost of producing suspension resin; 49.6 to 61.3 percent of the cost of producing pipe grade suspension resin; and 49.6 to 61.9 percent of the cost of producing flexible grade suspension resin. Letter from Robert H. Rawson to Acting Chairman Calvani (February 6, 1986), at 2 *in camera*. The Commission hereby makes the Rawson letter—and the response filed by complaint counsel—a part of the *in camera* record in this proceeding.

The Rawson letter estimates are consistent with other record evidence. One study indicates that in January 1983, VCM accounted for 54 to 62 percent—as an average among PVC producers—of the "total cash cost" of producing PVC. RX 1213H *in camera; see* CX 246 *in camera*. A second 1981 study conducted by Air Products suggests that VCM accounts for 65 to 75 percent of total PVC production costs. RX 57A *in camera*.

[172] Lefebvre, CX 296Z72 *in camera; accord* Schaefer, CX 295Z4 *in camera;* Becker, CX 297Z6–7 *in camera; see also* Kienholz, Tr. 811–12; Taylor, Tr. 1705.

[173] *See FTC Statement*, ¶ 4516 at 6901–4. Profit maximization is a function of both marginal cost and marginal revenue. High-cost firms will usually prefer higher umbrella price levels and lower output levels than firms with lower costs. *See, e.g.*, Posner, *supra* note 58, at 51.

[174] The third broad category is the cost of acquiring (or producing) and transporting VCM. Respondents estimate that in 1980, integrated firms' cost of producing VCM varied by up to 3 cents per pound, when the new materials used are valued at market prices. RAB at 42–43. Of course, the allocation of joint costs in integrated firms is necessarily arbitrary, and presents a notoriously difficult accounting problem.

It seems unlikely that VCM cost differences between integrated and nonintegrated producers are either significant or persistent. As complaint counsel point out, the "opportunity cost" of VCM, rather than its actual production cost, should be attributed to vertically integrated PVC producers. The opportunity cost is the price at which an integrated firm could sell VCM if it did not use it internally. *See* Scherer, *supra* note 61, at 305; Stigler, *supra* note 61, at 105. If internal VCM costs were persistently lower than opportunity costs, nonintegrated producers would not be able to compete with integrated producers. *See, e.g., Azcuenaga Opinion* at 13 n.22, *citing* Klass, Tr. 5337–38; IDF 203. One would also expect entry into the PVC market to require simultaneous entry into the VCM market. Respondents make no such claim.

With respect to VCM transportation costs, PVC producers that receive VCM via pipeline realize a cost advantage of 0.5 cents to 1.0 cent per pound. RPF 292 *in camera, citing* RX 57Z62 *in camera*.

[175] DiLiddo, Tr. 3395; Disch, Tr. 641–43.

[176] IDF 199; Disch, Tr. 645; Schaefer, Tr. 1149.

[177] The cost of producing general purpose PVC resin may be as much as [——] cents per pound lower in a large reactor than in a small reactor. RX 875V–W *in camera*. Most firms operate several different sizes of reactor. For example, Tenneco operates some 3,750 gallon reactors at its Burlington, New Jersey plant, and some 34,000 gallon reactors at its Pasadena, Texas plant. Disch, Tr. 638. Reactors with a capacity of 18,000 to 50,000 gallons are classified as large reactors. Disch, Tr. 640.

they tend to be manufactured in less efficient smaller reactors, and require more technical customer services.[178]

Because different firms use reactors of different sizes to produce different PVC resins, their production costs differ significantly. A 1982 Goodrich cost study of eight PVC producers indicated that "total plant operating costs" for producing PVC varied among plants from 14.30 cents per pound to 21.94 cents per pound.[179] These cost differences are accentuated by the fact that different PVC producers emphasize the production of different PVC grades.[180]

Second, as noted *supra*, transportation costs differ to some degree from one PVC producer to another. In particular, significant locational differences mean that PVC producers incur different costs in shipping PVC resin throughout the United States.[181] Complaint counsel maintain that most PVC is sold on a delivered price basis, and that price differences based on location have therefore effectively been eliminated. CPF 7.14. However, although uniform delivered pricing may have this effect, it is unclear whether delivered PVC prices are in fact uniform. Thus, transportation cost differences may further complicate any effort at price and output coordination in the PVC market.[182]

b. *VCM Market.* VCM production costs are much more similar from one VCM producer to another. There are two basic categories of manufacturing costs: (1) The cost of ethylene and chlorine feedstocks; and (2) the cost of converting them into VCM. IDF 290 *in camera*. In addition, transportation costs must be considered. Raw material costs are virtually identical. Virtually all VCM plants produce VCM from ethylene and chlorine feedstocks.[183] Ethylene and chlorine must be used in fixed proportions to produce VCM (60 percent chlorine and 40 percent ethylene), all firms use them in those proportions, both are highly homogeneous products, and VCM producers therefore pay similar prices for them.[184]

Second, all producers have access to similar production technologies, which permit the production of large volumes at low cost, because there are no significant patent barriers. IDF 291. Respondents' expert testified:

> [M]ost producers, if not all, have access to effective production technology which enables them to produce large volumes at low costs.[185]

Another witness testified that in the VCM market, no firm has

> a peculiar proprietary niche or some position that allowed [one firm] to achieve returns or earnings that somebody else couldn't * * *[186]

Furthermore, because VCM manufacturers produce only one grade of VCM, there is no reason—unlike the PVC market—to retain both large and small reactors. As a result, all VCM producers operate large, highly efficient plants. Several witnesses confirmed that all VCM producers have similar manufacturing costs. One estimated that short-run avoidable costs differed by only one-half cent per pound among firms in the industry.[187] Two other witnesses agreed that there is no significant cost disparity from one firm to another.[188] A 1981 Air Products study similarly concluded that VCM processing costs varied little from one VCM firm to another.[189]

Third, transportation costs do not differ significantly from one VCM producer to another, primarily bacause all except one domestic VCM plant are located along the Gulf Coast in Texas and Louisiana.[190] On balance, the record evidence establishes that VCM production costs are relatively similar across firms. Although respondents have identified some minor differences,[191] absolute congruence is not needed to heighten the likelihood of anticompetitive effects from the acquisition.

4. Size Distribution of Purchasers

The size distribution of purchasers of the relevant product may also affect the likelihood of anticompetitive effects from an acquisition. If a small number of buyers accounts for a large percentage of total product purchases, that may constrain the pricing discretion of product manufacturers to some degree.[192] By contrast, a large number of buyers are not likely to be able to constrain manufacturer pricing discretion.

a. *PVC Market.* It seems unlikely that PVC purchasers could, by virtue of their size, constrain the exercise of market power by PVC producers. One 1979 Goodrich study indicated that the largest PVC buyer (Carlon) accounted for less than 7 percent of the PVC market, and that 300 PVC buyers together accounted for 80 percent of the market. The study indicated that the

> customer base is attractive because it is readily identifiable, small enough to be reached by a manageable and economic sales force, yet not so concentrated that one or two customers can put enormous pressure on the suppliers to lower price. The biggest customer in the PVC business (Carlon) accounts for less than 7 percent of the total market.

CX 53J–K; *accord*, CX 64P,S. That pattern is also present in many of the product market segments. For example, Goodrich studies from the late 1970's identify 136 wire and cable purchasers (purchasing 8.4 percent of total PVC production); 166 flexible resin purchasers (18.1 percent); and 263 specialty resin purchasers (2 percent). IDF 216. The pipe segment is somewhat more concentrated on the buyer side. Although 100 buyers purchase pipe resin (accounting for 40 percent of total PVC production), the four largest purchasers

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[178] Becker, Tr. 1330–32; Arp, Tr. 3519–20; RX 34R; RX 639E. Giles Disch testified that there would be no economic advantage to Tenneco to construct a new small reactor plant today. Disch, Tr. 640. No new small reactor plant has been built in the United States since the late 1960's. Disch, Tr. 642.

[179] RX 1168A–B *in camera*; RX 245–0 *in camera*; RAB at 43, *citing* RPF 290–92; *accord* DiLiddo, Tr. 3224–26. Of course, these differences are not surprising because the plants studied produce a wide variety of PVC resins. During the 1981–1983 period, the average selling price of "general purpose PVC resin" ranged from 17 cents per pound to 35 cents per pound. RPF 291, *citing* CX 671A–C, F–H; RX 244A.

[180] RX 1170A; Klass, Tr. 4321–22.

[181] RPF 295 *in camera*, *citing* RX 1168A; RX 13K; RX 13Z5; McMath, Tr. 1956–57; RX 34Q; RX 264B; RX 325H; RX 945A–O; *see* page 67, *supra*.

[182] Complaint counsel also argue that locational differences "cancel out;" that is, the cost of shipping incoming VCM cancels out the cost of shipping outgoing PVC. IDF 201; ID at 61 n. 42. However, the VCM may originate in a location different and distant from the destination of the PVC into which it is converted.

[183] IDF 292 *in camera*. The one exception is a plant owned by Borden which produces VCM using a much older acetylene process. That plant accounts for only 2 percent of practical production capacity. *Id.*

[184] IDF 293–294 *in camera*; Goodrich Admissions 59–60; CX 41; L. Wheeler, Tr. 917–18.

[185] Klass, Tr. 4009.

[186] Kienholz, Tr. 884.

[187] L. Wheeler, Tr. 936–38.

[188] Kienholz, Tr. 814; Taylor, Tr. 1570.

[189] RX 57Z29, Z131 *in camera*; *accord* RX 677B *in camera*.

[190] RX 57Z6 *in camera*. The only exception is Goodrich's Calvert, Kentucky plant. *Id.*

[191] *See* RPF 410 *in camera*, *citing* RX 877D; RPF 411–412 *in camera*; RAB at 42–43. For example, respondents argue that VCM producers confront dissimilar raw materials costs as a function of whether or not they are integrated upstream into chlorine and caustic soda production. RPF 411 *in camera*. However, as discussed in note 174 *supra*, the appropriate cost at which to evaluate an internally transferred input is its market price (opportunity cost), because that is the value the integrated firm gives up by using the input internally instead of selling it on the open market. Moreover, even if upstream integration could be a source of differentiation, it would have little significance in this case because in 1983 firms accounting for nearly 80 percent of total VCM practical production capacity *were* integrated into chlorine production. Only Borden, Shell and Conoco were not so integrated. RX 246.

[192] *HCA v. FTC*, 807 F.2d at 1391, *citing* Stigler, *supra* note 61 at 39, 43–44; *see FTC Statement*, ¶4516 at 6901–4; *DOJ Guidelines* at ¶3.42.

account for 60 percent of that total, or 24 percent of total PVC production.[193]

b. *VCM Market.* The level of concentration among VCM purchasers is considerably greater. Seven PVC producers—Air Products, CertainTeed, Keysor-Century, Occidental, Pantasote, Shintech and Tenneco—do not produce VCM, and therefore must purchase it from other firms.[194] Nevertheless, concentration levels are substantially higher among VCM producers than among VCM buyers; only three nonintegrated VCM producers accounted for approximately one-half of VCM production in 1982. It therefore seems unlikely that VCM buyers could constrain the pricing discretion of VCM sellers to any significant degree.

5. Transaction Characteristics

The manner in which sales are typically made in an industry also affects the likelihood of anticompetitive effects from an acquisition, for two reasons. First, if most firms make only a few sales each year, their incentives to cheat are likely to be high. Each additional sale contributes substantially to income, and the risk of effective retaliation from competitors is correspondingly reduced. On the other hand, if the typical firm makes many sales each year, the value of cheating on a given transaction is not substantial and the prospect of effective retaliation may be correspondingly greater.[195] Second, when sales are made openly, cheating can be detected quickly and easily, and retaliation by rival firms is consequently more likely. On the other hand, when sales are made through private negotiations, it is much more difficult to detect and punish secret price concessions.[196]

a. *PVC Market.* Approximately 50 to 60 percent of bulk and suspension PVC resin is sold pursuant to written contracts, normally one year in duration.[197] Although the contracts may specify an expected volume for the entire year, buyers typically advise sellers each month of the amount they will purchase the following month.[198] Thus, in practical effect, buyers purchase product on a monthly or even daily basis.[199]

PVC sales contracts also typically do not specify the prices that are to prevail throughout the contract term. Instead, they rely upon "competitive price provisions," in which a buyer notifies the seller when it has

> a competitive offer for equal terms, equal quantities, equal time situations, which allows us as the seller to generally either meet that new criterion or decline * * * [and] not supply that volume stipulated.[200]

In short, pursuant to these clauses, buyers are permitted to cancel purchases if they can secure lower prices elsewhere, but are required to give sellers the opportunity to meet competing offers. IDF 211 *in camera.* The competitive price provisions ensure that PVC sellers quickly discover price concessions offered by competing firms. *See* IDF 237.

A significant proportion of the remaining 40 to 50 percent of PVC sales is made pursuant to an ongoing customer-supplier "handshake" relationship, in which orders are placed and filled on a "current market conditions" basis.[201] These relationships are relatively secure because of certain peculiarities associated with any given brand of PVC resin. A particular supplier's PVC resin must be tested on a customer's fabricating equipment, and the equipment must be adjusted to the resin's formulation before that customer can use it.[202] Customers are therefore reluctant to switch suppliers, and will not do so when competing prices are identical. IDF 220. Moreover, although some firms buy PVC from more than one supplier, they fill their requirements for a given plant from one supplier, in order to ensure plantwide consistency. IDF 221. These considerations lead customers buying on a "handshake" basis to notify their sellers of competitive offers, so that suppliers regularly receive information concerning lower prices from these buyers as well. IDF 237.

These factors together suggest that the frequency and size of transactions in the PVC market increase the likelihood of anticompetitive effects from the acquisition in that market.

b. *VCM Market.* Contracts for the purchase of VCM are typically quite similar to PVC purchase contracts; they are discussed in detail in Part IV.C.7, *infra.* As a result, the frequency and size of VCM purchase transactions similarly increase the likelihood of anticompetitive effects in the VCM market. Of course, a substantial proportion of VCM production is manufactured by firms that are integrated into PVC production. The significance of that fact is also discussed in detail in Part IV.C.7, *infra.*

6. Stability and Predictability of Demand and Supply Conditions

The stability and predictability of demand and supply conditions also help to determine the likelihood of anticompetitive effects from an acquisition. Greater stability and predictability make it easier to create and sustain a collusive arrangement. By contrast, shocks that suddenly alter demand or supply conditions may complicate collusion. In industries in which fixed costs are a high percentage of total costs, the presence of substantial excess capacity—as a result of a sudden decline in demand—may place strong downward pressure on prices.[203] Firms may in the short run be willing to sell at prices below their average total costs, because prices at such levels, in addition to covering all variable costs, cover at least a portion of their fixed costs. However, fixed costs are not a particularly large proportion of total costs in either the PVC or the VCM market. *See* note 171, *supra,* and page 92 and 94, *infra.* Moreover, during periods of demand growth, such as the period beginning in 1983 and continuing today, any pressure to reduce PVC or VCM prices that producers' fixed costs might have created has disappeared, because capacity utilization has returned to high levels.

a. *PVC Market.* Demand for PVC grew rapidly in the 1960's and 1970's, largely because of growth associated with construction applications. In the 1960's the industry grew at an average annual rate of 13 to 15 percent, but that rate declined to 10 to 11 percent in the early 1970's. IDF 233; IDF 234 *in camera.* The average annual growth rate then fell to 8

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[193] IDF 216–217; Disch, Tr. 683; *see* RPF 336 *in camera, citing* RX 35E; RX 639D; RX 639B.

[194] IDF 78. The remaining five PVC producers—Goodrich, Formosa, Georgia Pacific, Borden and Conoco—are fully integrated upstream into VCM production. *Id.* The three remaining VCM producers are not integrated downstream into PVC production. *Id.*

[195] *DOJ Guidelines* at §3.42; Scherer, *supra* note 61, at 220–22; Hay, *supra* note 58, at 450.

[196] Scherer, *supra* note 61, at 222–25; Hay, *supra* note 58, at 450–51.

[197] IDF 211 *in camera,* 219 *in camera;* DiLiddo, Tr. 3253 (Goodrich: 60 percent contract business; 20 percent "handshake type of relationship;" 20 percent "spot basis"); Weber, Tr. 1790 (Diamond: "Well over 50 percent was sold under contract."); Disch, Tr. 685.

[198] *E.g.,* Disch, Tr. 685.

[199] IDF 218; Disch, Tr. 707, 728; McMath, Tr. 1897, 1951; Schaefer, Tr. 1140, 1200; *see* RX 899A.

[200] Disch, Tr. 684; *accord* DiLiddo, Tr. 3254–55; Weber, Tr. 1789–90. On the significance of similar provisions for facilitating collusion, *see generally* Salop, *supra* note 58; Clark, *supra* note 58.

[201] IDF 219 *in camera.* The remaining proportion of PVC sales is made on the spot market.

[202] Yu, Tr. 2159; DiLiddo, Tr. 3371–72; H. Wheeler, Tr. 1747–48.

[203] *See, e.g.* Hay, *supra* note 58 at 450; Scherer, *supra* note 61, at 209.

percent by the end of the 1970's, and since 1979 the industry has grown at an average rate of 3 to 4 percent annually. IDF 234. A number of witnesses testified that PVC resin is a "mature product," and that annual growth will approximate annual GNP growth (3 to 4 percent annually) for the foreseeable future. IDF 235; Disch, Tr. 692.

Capacity utilization levels in the PVC market vary with general economic conditions, particularly conditions in the construction industry. Respondents note that in the 1980's construction has accounted for "well over 50% of PVC consumption.[204] The most relevant measure of capacity is practical production capacity, because it determines the amount of capacity that can be placed in production at little additional marginal cost. Between 1970 and 1974, practical production capacity ranged from 96 percent in 1970 to 94 percent in 1973, and never fell below 93 percent. In 1974, with the onset of the recession, capacity utilization fell to 89 percent, and to 64 percent in 1975, before climbing to 78 percent in 1976, 86 percent in 1977, 94 percent in 1978, and 93 percent in 1979. In 1980, when interest rates rose and construction declined, capacity utilization fell to 80 percent. It remained at 80 percent in 1981, fell with the recession to 75 percent in 1982, increased to 84 percent in 1983, and increased again to an estimated 91 percent in 1984.[205] A number of witnesses testified that capacity utilization levels would continue to increase gradually during the 1980's.[206] Several record documents indicate that an 80 percent capacity utilization level makes PVC resin prices profitable. For example, a 1983 Goodrich document indicates that "industry capacity utilization around 80% * * * [h]istorically * * * has supported price increases * * *"[207]

Respondents argue that there is substantial excess capacity in the PVC industry, as a consequence of producer forecasting errors and the severity of the recent recession. IDF 241–242. Although this was apparently true during the recession, capacity utilization has recently rebounded to a high level. As a result, any incentive to cheat on consensus prices in response to depressed demand is not likely to persist over the next several years. That is particularly true because fixed costs do not generally represent a particularly large percentage of total costs in the PVC market. A 1983 study, for example, estimates that variable costs account for approximately 69 to 76 percent of the total cost of producing PVC resin.[208]

Supply conditions are similarly likely to remain relatively stable and predictable over the next several years. VCM is the primary input used to manufacture PVC, and ethylene and chlorine are in turn the primary inputs used to manufacture VCM. Ethylene is a petroleum compound, and its price is not likely to increase significantly over the next several years, given the fact that petroleum prices have recently declined and are likely to remain low for the foreseeable future. Chlorine prices are also relatively stable, and are likely to remain so for the next several years.

b. *VCM Market.* Because 96 percent of all VCM production is used to produce PVC, demand for VCM is closely tied to demand for PVC. In the 1960's, the VCM market grew at an average annual rate of 12 to 15 percent, but that rate declined to 8 to 10 percent in the early 1970's. IDF 313–14; Kienholz, Tr. 792. Industry witnesses indicated that they expect the VCM growth rate to approximate GNP growth (3 to 4 percent annually) for the foreseeable future. IDF 315 *in camera*; IDF 316; Kienholz, Tr. 792.

Capacity utilization levels in the VCM market also vary with general economic conditions, and in particular with conditions in the construction industry. In 1979 the VCM market operated at 96 percent of its practical production capacity, but that level fell to 83 percent in 1980, 77 percent in 1981, and 74 percent in 1982, before increasing to 75 percent in 1983 and to an estimated 92 percent in 1984.[209] Historically, an 80 percent operating rate has permitted VCM producers to earn small profits, while a 90 percent operating rate has permitted them to achieve "longterm reasonable return objectives." Kienholz, Tr. 807.

Respondents contend that VCM producers currently confront substantial excess capacity, and that it will persist for the foreseeable future. IDF 323. However, several witnesses testified that the excess capacity developed because of the recession; that capacity utilization improved in 1984; and that it is expected to further improve over the next few years to such an extent that new capacity may be needed by 1990. IDF 325 *in camera*; IDF 326; *see* Kienholz, Tr. 796–97. The 1984 capacity utilization data support that conclusion. Moreover, even lower capacity utilization levels are not likely to place strong downward pressure on prices because fixed costs do not represent a very large percentage of total costs. For example, the 1981 Air Products study indicates that at least 50 percent of total VCM production costs are variable costs. *See* RX 57Z30 *in camera*.

Supply conditions are also likely to remain stable for the next few years. As we observed *supra*, chlorine and ethylene are the primary components of VCM, and prices for both are likely to remain relatively stable for the foreseeable future.

7. Significance of Vertical Integration

The degree to which firms within an input ("primary" or "upstream") industry are integrated into a "secondary" (or "downstream") industry may affect both their incentives to create a coordinated price and output strategy, and their ability to maintain that strategy by detecting and punishing efforts to deviate from it. These two concepts are closely related. For example, firm incentives to coordinate prices and output are likely to be higher if firms believe they will be able to monitor the behavior of their competitors. An acquisition involving one or more integrated firms in either the primary or the secondary market may alter that balance for the firms involved, and thereby frustrate or facilitate collusion in either market.[210]

[204] RPF 103 *in camera, citing* RX 1173A. Construction applications include pipe, wire and cable, siding, and floor tile. *See* pages 18–19, *supra*.

[205] CX 666H *in camera*. The cited capacity utilization levels are for January of each year cited. The 1984 figure is based upon the assumption that bulk and suspension PVC production increased by 12 percent in 1984, as reported by the Society of the Plastics Industry (*see* CX 778C), while capacity did not increase. CPF 17.08 n. 1 *in camera*.

Nameplate capacity utilization levels exhibit a similar association with economic conditions, ranging from 88 percent in 1970 to a low of 56 percent in 1975, to a peak of 88 percent in 1978, to a low of 71 percent in 1982, and to an estimated high of 87 percent in 1984. CPF 17.03 *in camera, citing* CX 666H *in camera*.

[206] Disch, Tr. 691–92; Schaefer, Tr. 1123; Eades, Tr. 1473–74, 1480; H. Wheeler, Tr. 1736–37; CX 220C.

[207] CX 185Z6–27 *in camera; accord* Schaefer, Tr. 1124; RX 840B.

[208] RX 1213 *in camera; see* RX 428P *in camera*.

[209] CX 665A–F *in camera*. The cited capacity utilization levels are for January of each year cited. The 1984 figure is based upon the assumption that VCM production, like PVC production, increased by 12 percent in 1984. *See* note 205, *supra*. Nameplate VCM capacity utilization levels changed in a similar fashion, from 92 percent in 1979 to a low of 70 percent in 1982 and 1983, and then to an estimated 87 percent in 1984. CX 665A–F *in camera*.

[210] The presence of vertical integration may also affect firm incentives to engage in anticompetitive conduct other than collusion, such as the anticompetitive foreclosure of unintegrated downstream producers from purchasing an input manufactured by previously unintegrated upstream producers. *See* Krattenmaker & Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power Over Price*, 96 Yale L.J. 209 (1986); Salinger, *Vertical Mergers and Market Foreclosure*

Continued

a. *Effects on Firm Incentives to Cooperate.* The effects of vertical integration upon firm incentives to collude will depend upon whether any given integrated firm on balance will benefit from or be harmed by collusion. It is perhaps easiest to appreciate these effects by considering the incentives favoring collusion in the primary (upstream) market—in this case, the VCM market. The foregoing analysis establishes that collusion would be both possible and profitable in the VCM market. Firms that are *not* integrated downstream into the secondary (PVC) market will therefore have a strong incentive to increase primary market prices to supracompetitive levels. VCM producers that *are* integrated downstream are likely to have an equally strong incentive to increase VCM market prices, because they can produce either as much VCM as they need—or more than they need—to supply their PVC operations.

First, if integrated VCM producers can manufacture only enough VCM to supply their own PVC operations, then an industrywide increase in VCM market prices will permit them to increase their PVC prices, because nonintegrated PVC producers will have to increase their prices in order to accommodate the VCM price increase.[211] Thus, these integrated firms may actively participate by *reducing* their own captive production. Alternatively, they may passively welcome collusion in the primary market—in the sense that they will profit from declining to increase VCM production in response to higher VCM prices—thereby allowing unintegrated VCM producers to reduce their output and secure higher VCM prices. Second, if integrated firms can produce more VCM than they need for PVC production—and hence can make some open market VCM sales—they will secure additional revenues from an increase in VCM prices. In both of these situations, therefore, integrated firms will have an incentive to support an increase in VCM market prices, and hence to support a collusive effort in that market.[212] All integrated VCM producers now fall into one of these two categories (*see* Table II and Table V, *supra*), and therefore have the incentive to support a collusive effort to raise VCM market prices.

If, by contrast, an integrated firm produces more of the secondary market product than it can sustain with its own primary market production, and hence must purchase additional primary market inputs from other firms, that may reduce its interest in higher primary market prices, although its secondary market revenues would still benefit from higher primary market prices. Goodrich found itself in this position prior to the acquisition, when it controlled 1.192 billion pounds of PVC practical production capacity, but only 930 million pounds of VCM practical production capacity. *See* Table VII, *infra*. If some integrated firms can produce more of the primary product than they need while others cannot, their incentives with respect to primary product price levels will differ to some degree.[213] None of the integrated VCM producers currently fall in the latter category.

b. *Effects on Firm Monitoring Efforts.* Any firm that participates in a collusive effort—whether it is integrated or not—will prefer to see its competitors keep their prices uniformly and persistently at supracompetitive levels, so that it can both sell its output at supracompetitive prices and secure additional profits by cheating on the consensus. Colluding firms must therefore be able to enforce their consensus by detecting and retaliating against cheating on the consensus.

Vertical integration may affect the extent to which colluding firms can enforce their consensus in two ways. First, if some integrated firms produce more of the primary product than they use internally, nonintegrated primary producers must be able to monitor open market sales of the primary product by integrated firms. This monitoring task is no different from the monitoring required to sustain a collusive arrangement among nonintegrated firms, and conditions in the VCM market permit VCM producers to monitor integrated firm VCM sales.

Second, the colluding firms must be able to monitor secondary market sales by integrated firms, because cheating through "reductions" in the "price" of the primary product that integrated firms use internally can take the form of additional secondary market sales. In general, the colluding firms can rely on the integrated firms as a group to monitor their integrated competitors. More precisely, if several firms accounting for a substantial percentage of primary market output are vertically integrated, each can be expected to monitor carefully the secondary market prices of its integrated competitors, and to retaliate quickly if cheating in that market or in the primary market occurs.[214] The speed with which price reduction information reaches nonintegrated producers will increase as the integrated producers' collective share of secondary market share increases. Integrated VCM producers currently account for approximately 50 percent of VCM production.

A second monitoring mechanism allows information on the downstream behavior of the integrated firms to reach nonintegrated upstream producers, so that the nonintegrated firms may participate in policing secondary market cheating by integrated firms. If the nonintegrated VCM producers observe a reduction in orders from their nonintegrated PVC producer customers—accompanied by customer complaints of a price squeeze (or complaints that their PVC fabrication customers report a price squeeze)—they

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(Working Paper No. FB–84–17, Graduate School of Business, Columbia University 1985). We do not need to consider other anticompetitive mechanisms in the present case in view of our finding of liability based upon an increase in the likelihood of collusion in the VCM market. In addition, a vertical acquisition may reduce the type of inefficiency described in the economic literature on successive monopolies. *See, e.g.*, Waterson, *Vertical Integration, Variable Proportions, and Oligopoly*, 92 Econ. J. 129 (1982). However, this case focuses on a horizontal, rather than a vertical, acquisition.

[211] If the price elasticity of demand for the output is low—as it is for both VCM and PVC—then it will be possible to pass along most or all of the increase in input prices. The increase in VCM market prices will not actually increase the VCM costs of integrated firms, except that the opportunity cost of devoting VCM production to captive PVC output instead of VCM open market sales will increase. The cost of diverting VCM production in this fashion may be substantial, however, especially if no excess VCM capacity is available.

[212] If integrated producers have no incentive to compete away primary market price increases, then unintegrated primary market firms can be fairly sure that their integrated rivals will acquiesce in or support collusion by the unintegrated subset. In this situation, collusion is likely if the number of unintegrated firms is small, even if there are a large number of producers when the integrated firms are also counted. Hence, an acquisition that makes an integrated firm more likely to facilitate or passively accept collusion will increase the likelihood of collusion by unintegrated firms in the primary market. *See* Krattenmaker & Salop, *supra* note 210, at 262 (discussing "Frankenstein Monster").

[213] However, when downstream producers cannot substitute other inputs for the upstream product, when downstream production is characterized by constant returns to scale, and when downstream markets are competitive, a firm's incentive to collude in the upstream market will not depend upon its downstream market position. *See* White, *Antitrust and Video Markets: The Merger of Showtime and the Movie Channel As A Case Study*, in *Video Media Competition* (E. Noam ed. 1985) (significance of variable proportions production technology).

[214] Retaliation in the form of increased sales at reduced prices will be most feasible if the retaliating firms are operating along a horizontal section of their marginal cost curves. In that situation, there are no significant capacity constraints upon production increases. Because VCM producers are currently operating at an estimated 90 percent of practical production capacity (*see* page 93, *supra*), there is enough slack—approximately 10 percent of practical production capacity—to make effective retaliation feasible.

can infer that the integrated firms are cheating on the VCM cartel by lowering prices in the PVC market. Moreover, because VCM is such a standardized product, nonintegrated VCM producers are familiar with the cost functions of their integrated rivals, facilitating their ability to distinguish integrated firm cheating from price changes occasioned by changing cost conditions.

c. *The Effects of Vertical Integration Upon the VCM and PVC Markets.* Table VII describes the degree of integration by ownership into PVC production of VCM producers.[215] Prior to the acquisition, firms *not* integrated forward into PVC production controlled 46.9 percent of total VCM practical production capacity (4.165 billion pounds); integrated firms controlled the remaining 53.1 percent. Prior to the acquisition, firms *not* integrated backward into VCM production controlled 44.6 percent of total PVC practical production capacity (2.985 billion pounds); integrated firms controlled the remainder. Prior to the acquisition, Goodrich was the only integrated firm that controlled *less* VCM practical production capacity (930 million pounds) than PVC practical production capacity (1.192 billion pounds).[216] By contrast, Diamond controlled substantially *more* VCM capacity (1.070 billion pounds) than PVC capacity (602 million pounds). After the acquisition, five integrated producers (Diamond and Ethyl exited) accounted for 58.08 percent of total VCM practical production capacity, and 61.2 percent of total PVC practical production capacity. *See* Tables II and V, *supra.*

TABLE VII.—VERTICAL INTEGRATION JANUARY, 1982

Firm [217]	VCM practical production capacity	PVC practical production capacity
Dow	1.945 (1st)	—
Shell	1.385 (2nd)	—
Diamond Shamrock	1.070 (3rd)	0.602 (4th)
Ga. Pacific	1.000 (4th)	0.600 (5th)
Goodrich	0.930 (5th)	1.192 (1st)
PPG	0.835 (6th)	—
Conoco	0.650 (7th)	0.585 (6th)
Borden	0.472 (8th)	0.420 (8th)
Ethyl	0.300 (9th)	0.120 (12th)
Formosa	0.286 (10th)	0.196 (11th)
Tenneco Polymers	—	0.785 (2nd)
Shintech	—	0.720 (3rd)
Occidental Chemical	—	0.556 (7th)
Air Products	—	0.310 (9th)
CertainTeed	—	0.220 (9th)
Other	—	0.394
Total	8.873	6.700

[217] The listed firms are those that were producing VCM and/or PVC as of 1982. The capacity figures are expressed as billions of pounds. The data are derived from Table I and Table IV, *supra.*

The acquisition strengthened the incentives of VCM producers to collude, and improved their ability to enforce such a consensus. Prior to the transaction, Goodrich and Diamond were both vertically integrated producers, but Goodrich was a net VCM buyer—with less VCM capacity than PVC capacity—while Diamond was a net VCM seller—with more VCM capacity than PVC capacity.[218] As a result, Goodrich had a significant interest in somewhat lower VCM prices that conflicted to some degree—but did not override—its interest in higher PVC prices. After the acquisition, Goodrich controlled 23.7 percent of VCM practical production capacity (1.997 billion pounds), and 19.4 percent of PVC practical production capacity (1.34 billion pounds). The merged entity became a substantial net VCM *seller*—with greater VCM capacity than PVC capacity—to an even greater degree than Diamond has been before the acquisition.[219] By removing Goodrich as an integrated net buyer of VCM, and any incentive it might otherwise have had to secure lower VCM prices, the acquisition increased the incentive of the merged entity to collude in the VCM market, or at least to passively welcome collusion by the unintegrated VCM producers.[220] Removing Goodrich's incentive to thwart a collusive VCM price increase is of particular concern because there are only three unintegrated VCM firms. Coordinated action by the unintegrated VCM producers is therefore substantially more likely to occur.

In order the establish that vertical integration will not defeat collusion in the primary market, it is not enough, however, to establish that nonintegrated VCM producers have a strong incentive to collude and that integrated producers have an incentive to actively support or acquiesce in such a collusive effort. In addition, parcticipating firms must be able to enforce the terms of their collusive effort, and as a part of that effort must be able to monitor the conduct of their competitors. As the *DOJ Guidelines* indicate,

> [c]ollusive agreements are more likely to persist if participating firms can quickly detect and retaliate against deviations from the agreed prices or other conditions. Such deviations are easiest to detect, and therefore less likely to occur, in markets where detailed information about specific transactions or individual price or output levels is readily available to competitors.

DOJ Guidelines at ¶ 3.42.

The record evidence suggests that VCM producers could successfully enforce the terms of a collusive arrangement. Nonintegrated and integrated VCM producers can and do successfully monitor VCM market prices. Most VCM is sold pursuant to written long-term contracts at least one year in length.[221] Most such contracts permit the seller to reset the contract price over the contract term, and most of them also require the seller to provide notice of price increases a prescribed number of days in advance.[222] In some

[215] In this industry, the crucial stages of production are (a) the manufacture of ethylene dichloride from ethylene and chlorine, (b) its transformation into VCM, (c) the production of PVC resin, and (d) the fabrication of PVC-based industrial and consumer products. The fabrication stage includes the production of PVC compounds from PVC resins.

The significance of vertical integration for competition in the VCM and the PVC markets need only be evaluated with respect to integration by ownership. Respondents contend that the three unintegrated VCM producers have ceded control over major parts of their VCM capacity to unintegrated PVC producers through long term VCM supply contracts. RAB at 76–77; RPF 372 *in camera.* Although firms can transfer corporate control by contract short of integration by ownership, such a result would require the contractual allocation of the great majority of firm capacity. Functional integration is not created by long term contracts involving much smaller percentages of capacity. *Compare* RPF 371 *in camera with* RPF 374 *in camera.* Moreover, these contracts typically give the firms the cover independent discretion as to the quantities they will buy or sell, and their customers and sources of supply. *See* pages 21–22, *supra.*

[216] Because it takes 1.02 to 1.04 pounds of VCM to produce 1 pound of PVC resin (Disch, Tr. 643), VCM and PVC practical production capacities can be compared essentially on a one for one basis.

[218] In 1981, Goodrich produced 843.962 million pounds of PVC (16.1 percent of 5.242 billion pounds), and 774.728 million pounds of VCM (11.3 percent of 6.856 billion pounds). By contrast, Diamond produced 435 million pounds of PVC (8.3 percent of 5.242 billion), and 921.446 million pounds of VCM. *See* Tables I and IV, *supra.*

[219] In 1933, Goodrich produced 1.0368 billion pounds of PVC (18.4 percent of 5.635 billion pounds), and 1.5655 billion pounds of VCM (22.26 percent of 7.033 billion pounds). *See* Tables II and V, *supra.*

[220] Even if the PVC market were perfectly competitive, anticompetitive conduct in the VCM market could create power over price in the PVC market by in effect creating an involuntary PVC cartel: that is, by forcing all PVC producers to raise price in a coordinated fashion, whether or not a voluntary PVC cartel could have formed. *See generally* Salop and Scheffman, *infra* note 240. In other words, the increase in PVC prices requires a downward slopping *market* demand curve but not downward sloping *firm* demand curves.

[221] IDF 296 *in camera, citing* Taylor Tr. 1663–68; L. Wheeler, Tr. 958 *in camera;* IDF 305 *in camera, citing* Weber, Tr. 1839–40; Kienholz, Tr. 811–812; Taylor, Tr. 1592–93; Schaefer, Tr. 1145.

[222] IDF 296 *in camera, citing* Goodrich Admissions 507, 509; CX 4Z–40; IDF 300 *in camera, citing* Wheeler, Tr. 958–960 *in camera; CX 702; CX 705; CX 707; CX 735; CX 736; CX 739; IDF 317; Taylor, Tr. 1596.*

VCM contracts, the price to be charged in determined with reference to VCM prices charged by other firms in the VCM market.[223] Most VCM contracts also contain meeting competition clauses, pursuant to which a buyer that receives an offer of a lower price from a competing seller is obligated to report that price to the contracting seller and give the contracting seller an opportunity to match it.[224] Moreover, in VCM sales relationships not involving written contracts, buyers frequently permit current suppliers to meet competitive offers. IDF 298. These provisions—whether formally contractual or not—give VCM buyers a strong incentive to monitor industry transactions of price concessions, and increase the likelihood that whenever a seller offers a concession to a buyer, other sellers will discover it and retaliate. Industrywide use of the these clauses therefore discourages price reductions or other concessions in the VCM market.[225] As a result of these contractual provisions, VCM suppliers secure a considerable amount of price information through their customers. IDF 298, *citing* Kienholz, Tr. 810–811.

VCM suppliers also learn of competitive price changes through public announcements in the trade press.[226] In addition, many VCM sales are made pursuant to sales, tolling and exchange agreements between VCM competitors,[227] in part because integrated VCM sellers both buy and sell VCM. These agreements facilitate the exchange of price information among VCM producers.[228] In particular, because VCM contract prices are frequently subject to negotiation based upon changes in market prices, sales, tolling, and exchange agreements between VCM sellers create a forum for discussing industry prices. For example, one Goodrich document indicates that an employee of a competing VCM seller called in late 1982 "to discuss the average VCM prices now prevailing in the marketplace * * *" CX 217C *in camera.*

As a consequence of the wide availability of price information, particularly through meeting competition clauses and supply interrelationships, VCM firms are generally able to secure relatively reliable and accurate VCM price information.[229] Hence, for example, a number of VCM sellers were familiar with the terms of a specific VCM supply contract between Dow and Air Products.[230] Furthermore, VCM producers monitor the market shares, capacity, and changes in capacity of their VCM competitors.[231]

It is conceivable in some industries that purchasing firms will recognize that meeting competition clauses may facilitate seller collusion, and will therefore prefer to switch suppliers—in response to offers of lower prices from rivals—rather than report the offers to existing suppliers. Such conduct is unlikely in the VCM market, primarily because it is costly to switch from one supplier to another. VCM is a highly volatile gaseous chemical. Approximately 50 percent of the VCM sold in the United States is transported by pipeline from suppliers' plants to their customers' premises.[232] Pipeline transportation is cheaper and safer than transportation by barge or tank car.[233] As a result, once such a pipeline is in place, the cost savings it produces make it highly unlikely that a VCM customer will switch to another supplier.[234] The record evidence also establishes that non-pipeline customer/supplier relationships tend to be stable over time.[235] In short, most VCM buyers prefer to stay with their current suppliers.[236] Thus, most VCM buyers will report offers of lower prices to their current suppliers so that they can match them. In conjunction with the supply interrelationships described above, the active assistance of VCM purchasers permits VCM producers easily to detect cheating on *external* VCM prices in the open VCM market by competing VCM producers—whether integrated or not.

Both integrated and nonintegrated VCM producers can also monitor cheating by integrated VCM producers—with respect to *internal* VCM "prices"—by observing the prices of PVC. Because they are intimately familiar with both VCM and PVC production processes, and are participants in both the PVC and VCM markets, integrated firms can easily detect cheating with respect to either VCM or PVC prices by their rivals. Nonintegrated VCM producers can rely upon their customers to quickly detect and report PVC price reductions.[237] As noted *supra*, most PVC is sold pursuant to long term contractual or "handshake" relationships that typically contemplate price and output changes on a monthly basis.[238] These arrangements almost invariably provide—either expressly or implicitly—that PVC purchasers are to notify their suppliers of offers of lower prices by competing suppliers, and are to give their suppliers an opportunity to match those prices.[239] In addition, suppliers are aware of other suppliers' prices because they frequently exchange or toll PVC with one another. CPF 7.15. PVC suppliers are very likely, in turn, to report any PVC price reductions to their VCM suppliers.

Additional upstream or downstream integration on the part of any of these producers might make price and output monitoring somewhat more difficult. However, that does not appear to be the case in this industry. On the upstream side, integration into chlorine production is unlikely to complicate monitoring. In 1983, firms accounting for 80 percent of total VCM practical production capacity were integrated backward into chlorine production; only Borden, Shell and Conoco were not so integrated. RX 246. On the downstream side, it is true that most PVC resin producers have some facilities for compounding and/or fabricating PVC. However, respondents have adduced no evidence indicating that these facilities together account for more than a small proportion of total PVC resin.

In short, both integrated and nonintegrated VCM producers have

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[223] IDF 297 *in camera, citing* Schaefer, Tr. 1223 *in camera;* CX 88X–Y *in camera.*

[224] IDF 296 *in camera, citing* Wheeler, Tr. 958–960 *in camera;* CX 88X–Y *in camera;* IDF 317; Kienholz, Tr. 811–813; *see* Taylor, Tr. 1596–97.

[225] *See* Kienholz, Tr. 811; *see also* Schaefer, CX 295Z30 *in camera; see generally United States v. FMC Corp.*, 306 F. Supp. 1106, 1112 (E.D. Pa. 1969); Salop, *supra* note 58 at 27–30; Clark, *supra* note 58 At 934–935.

[226] IDF 299, *citing* CX 736; CX 737; CX 739.

[227] L. Wheeler, Tr. 972–75 *in camera;* CX 555Z11 *in camera.*

[228] IDF 301 *in camera, citing* DiLiddo, Tr. 3295 *in camera,* Tr. 3299; CX 88 *in camera;* CX 24 *in camera;* CX 26 *in camera;* CX 206A; CX 208; CX 212; CX213; CX 214; CX 215; CX 217 *in camera.*

[229] IDF 302, *citing* Diamond Admission 535; CX 6V, Z67.

[230] IDF 303, *citing* Kienholz, Tr. 853–56; H. Wheeler, Tr. 1020–24 *in camera;* Schaefer, Tr. 1193–95; DiLiddo, Tr. 3306–09.

[231] IDF 304, *citing* Diamond Admission 523; CX 6V, Z–66; CX 169F; CX 971 *in camera;* CX 146; CX 215; CX 238E; CX 425.

[232] IDF 307, *citing* H. Wheeler, Tr. 989; Taylor, Tr. 1564.

[233] IDF 307, *citing* Kienholz, Tr. 756, 759–60; 789; L. Wheeler, Tr. 980–981; Taylor, Tr. 1563–64; Schaefer, Tr. 1129.

[234] IDF 307, *citing* Kienholz, Tr. 787–88, 790, 868–70; Taylor, Tr. 1566–67.

[235] IDF 308 *in camera, citing* Kaserman, Tr. 2500; Schaefer, Tr. 1145; CX 523T *in camera;* CX 419.

[236] IDF 306 *in camera, citing* Taylor, Tr. 1567–68; Schaefer, Tr. 1145.

[237] As noted *supra*, the fact that integrated producers account for a large percentage of PVC market sales makes it more likely that nonintegrated PVC producers will receive PVC price information concerning integrated producers quickly.

[238] IDF 211 *in camera;* IDF 219 *in camera;* Disch, Tr. 685.

[239] IDF 211 *in camera*, 237 *in camera;* Disch, Tr. 684; DiLiddo, Tr. 3254–55, Weber Tr. 1789–90. PVC buyers are very likely to report such offers to their suppliers because it is costly to switch suppliers, and they will therefore prefer to remain with their current suppliers. *See* page 88 and note 202, *supra.*

strong incentives to create and maintain a collusive arrangement, and can readily detect cheating from that arrangement and retaliate accordingly. In reaching this conclusion, it is important to emphasize and summarize the mechanism through which VCM producers could collude successfully. They collectively control an input that is essential to PVC production; that is highly homogeneous; that has a low price elasticity of demand; and that can be produced pursuant to a standardized technology available to all incumbent producers. In particular, the demand for PVC is sufficiently inelastic to make it likely that an increase in VCM prices can profitably be passed along to PVC customers. Anticompetitive conduct in the VCM market that raises the VCM price to all PVC producers will shift the supply curve of each downstream firm upward, and thereby increase the equilibrium price of PVC, because the demand curve for PVC is downward sloping.[240] This will occur even if the PVC market is perfectly competitive (and the record evidence does not in any event support that view).[241]

As a result, VCM producers can effectively manage a collusive arrangement not only within the VCM market, but within the PVC market as well. This is true despite the fact that it would be difficult to collude successfully in the PVC market alone, for the reasons summarized below. It is therefore incorrect to argue, as the respondents do, that it is impossible to collude in the VCM market because it is impossible to collude in the PVC market. It is rather possible for VCM producers to create and maintain a collusive arrangement in the PVC market, notwithstanding some of its structural characteristics, because it is possible to create and maintain a collusive arrangement in the VCM market.

D. Conclusion

1. PVC Market

The HHIs and four-firm concentration ratios for the PVC market after the acquisition were just barely high enough to surpass the thresholds specified in earlier Supreme Court and Commission cases, as well as the thresholds at the lower end of the "moderately concentrated" range of the *DOJ Guidelines*. The concentration levels therefore create only a weak presumption of anticompetitive effects from the acquisition in the PVC market. We are persuaded that the structural evidence, on balance, rebuts this weak presumption and establishes that the acquisition is unlikely to lessen competition substantially in the PVC market, for three reasons. First, PVC resin is relatively heterogeneous. Several grades of PVC resin are needed for different end use applications, different PVC producers manufacture different amounts of each grade, and an effective collusive strategy would require reaching an agreement on price and output levels for each grade. Moreover, even within any particular PVC resin grade, quality varies from one PVC producer to another, making effective collusion even more difficult.

Second, costs vary significantly from one firm to another, primarily because different firms' operating costs vary as a function of the use of large and small reactors, and the fact that different firms emphasize the production of different PVC resin grades. Transportation cost differences represent an additional complicating factor. Third, although the price elasticity of demand for PVC is, on balance, relatively low, an effort on the part of PVC producers to raise PVC prices to supracompetitive levels may be constrained to some degree by the higher price elasticity of demand for many PVC end use products, and made more difficult by variations in price elasticity from one PVC end product to another.[242]

2. VCM Market

The record evidence indicates that the HHIs and four-firm concentration ratios for the VCM market after the acquisition lay well above the concentration levels specified in earlier Supreme Court and Commission cases, and reached the upper end of the "moderately concentrated" range in the *DOJ Guidelines*. Moreover, the acquisition increased three different measures of HHI levels by 226 to 304 points. The concentration levels therefore create a relatively strong presumption that the acquisition substantially lessened competition in the VCM market.

The structural factors in the VCM market described above strengthen rather than rebut this presumption. First, impediments and one barrier to entry into the VCM market are sufficiently high to permit incumbent firms with market power to sustain supracompetitive prices for several years. Second, VCM is a highly homogeneous product; only one grade is used to produce PVC resin. Third, the price elasticity of demand for VCM is very low. Fourth, cost functions and raw materials and transportation costs do not differ significantly from one VCM producer to another. Fifth, the size and distribution of VCM buyers are not likely to constrain the pricing discretion of VCM producers. Sixth, although contracts in the VCM market typically cover at least one year, prices and output levels are renegotiated frequently—pursuant to both contractual and "handshake" relationships—and meeting competition clauses in the contracts keep sellers informed of the pricing behavior of their rivals. Seventh, although some excess capacity confronted VCM producers during the recession, capacity utilization levels have now approached their pre-recession levels, and most experts expect any remaining disparity to disappear completely by the 1990's. Demand is expected to grow at a relatively healthy annual rate of 3 to 4 percent. As a result, capacity utilization levels are likely to remain well above the 80 percent "break even" level for the foreseeable future. Supply conditions are also likely to remain stable. Finally, vertical integration between VCM and PVC producers is likely to facilitate efforts to collude in the VCM market. These factors strengthen the conclusion that the acquisition is likely to substantially lessen competition in the VCM market.

V. Performance Factors

An important part of the respondents' defense to the allegations in the complaint in this matter is summarized in their answering brief:

Throughout these proceedings an undeniable truth has stymied complaint counsel: the PVC industry was intensely

[240] This is true because, as noted *supra*, all current and potential PVC producers need VCM as an input. *See generally* Krattenmaker & Salop, *supra* note 210; Salop and Scheffman, *Raising Rivals' Costs*, 73 Am. Econ. Rev 267 (1983). *Compare DOJ Vertical Restraints Guidelines* ¶3.21 (facilitating collusion).

[241] Even if the PVC market were perfectly competitive, anticompetitive conduct in the VCM market could create power over price in the PVC market by in effect creating an involuntary PVC cartel; that is, by forcing all PVC producers to raise price in a coordinated fashion, whether or not a voluntary PVC cartel could have formed. *See generally* Salop and Scheffman, *supra* note 240. In other words, the increase in PVC prices requires a downward sloping *market* demand curve but not downward sloping *firm* demand curves.

[242] Commissioner Azcuenaga points out that because the price elasticity of demand for PVC is relatively low, PVC producers—as well as VCM producers—"could pass on a collusive PVC price increase." *Azcuenaga Opinion* at 15. That in fact is an important reason why *VCM* producers could collude successfully. *See* pages 110–111, *supra*. However, the fact that *PVC* producers *could* pass on a cost increase does not mean that they will be able to determine and maintain a set of consensus prices, in light of the heterogeneity of PVC resins, and cost differences from one PVC producer to another.

competitive before The BF Goodrich Company (Goodrich) acquired one polyvinyl chloride (PVC) plant and one vinyl chloride monomer (VCM) plant from Diamond Shamrock Chemicals Company (Diamond) in January 1982 and has been intensely competitive since the acquisition.

RAB at 1. Respondents recognize that a finding of actual anticompetitive effects is not needed to establish that the acquisition violates section 7 of the Clayton Act (*id.* at 2); establishing that the acquisition may substantially lessen competition is sufficient. However, respondents argue that actual post-acquisition evidence of industry performance is sufficient to rebut other evidence satisfying the latter standard. *Id.* at 3–8.

The Commission has concluded that the respondents' performance evidence does not rebut its finding of liability in the VCM market. Post-acquisition performance evidence must be evaluated very carefully, because of its potential for manipulation. Much of the record evidence of competition respondents adduce is not persuasive, particularly with respect to the VCM market. Moreover, there is no guarantee that the limited price competition that respondents have identified will continue now that demand and supply conditions in both the VCM and the PVC markets have improved. Furthermore, whatever probative value respondents' post-acquisition performance evidence might have is outweighed by the probative value of the post-acquisition structural evidence in the record.

The Supreme Court has determined that post-acquisition evidence tending to diminish the probability or impact of anticompetitive effects might be considered in a § 7 case.[243]

However, in making that determination, the Court has noted that the "probative value" of such evidence is "extremely limited." As the Court observed:

If a demonstration that no anticompetitive effects had occurred at the time of trial or of judgment constituted a permissible defense to a § 7 divestiture suit, violators could stave off such actions merely by refraining from aggressive or anticompetitive behavior when such a suit was threatened or pending.[244]

The Seventh Circuit has more recently confirmed that "[p]ost acquisition evidence that is subject to manipulation by the party seeking to use it is entitled to little or no weight." [245] Similarly, the Commission has determined that it is inappropriate to consider "exculpatory post-acquisition evidence of voluntary actions by the acquiring firm" in determining the legality of an acquisition.[246] For similar reasons, the conclusory testimony of industry executives to the effect that their industry is "competitive" is not particularly useful and cannot be given much weight.[247] The probative value of performance evidence is also limited by its susceptibility to transitory economic conditions, such as a recession. For example, the fact that profits are low in an industry with excess capacity does not necessarily mean that industry pricing is competitive.[248] Furthermore, the absence of "concrete anticompetitive symptoms" does not mean that

competition has not already been affected, "for once the two companies are united no one knows what the fate of the acquired company and its competitors would have been but for the merger." [249]

Recent Commission decisions have carefully followed these principles in evaluating post-acquisition performance evidence. In *Champion Spark Plug*, in evaluating a potential competition case, Judge Timony considered evidence suggesting that the acquired firm had been suffering from low and declining profits, but only in conjunction with structural evidence showing that (1) its share of the relevant market had declined from 45.1 percent to 34.3 percent during the same period; and (2) entry barriers were low, and seven new firms had recently entered the relevant market.[250] Similarly, in *BASF Wyandotte Corp.*, another potential competition case, Judge Hyun relied heavily upon structural evidence that "entry of new firms" was unimpeded; small firms in the relevant market were growing rapidly; and the acquisition eliminated only *de minimis* potential competition.[251]

Still more recently, the Commission has confirmed that the presence of some degree of competition does not necessarily refute the inference of the likelihood of anticompetitive effects created by relevant structural and behavioral evidence. In *HCA*, the Commission stated:

It is true that the undisputed evidence shows that more vigorous competition, including more direct price competition, is emerging in the health care industry, but it is a fallacy to conclude that growing competition in health care markets means that these acquisitions pose no threat to that competition. In fact, it is just that emerging competition that must be protected from mergers that facilitate the suppression of such competition.[252]

Similarly, the *DOJ Guidelines* advise that "[t]he fact that the market is currently competitive casts little light on the likely effect of the merger." *DOJ Guidelines* at ¶ 3.45.

A. PVC Market

Judge Howder concluded with respondents that the PVC industry performed in a relatively competitive fashion prior to the acquisition, and has continued to perform in that fashion since the acquisition. For example, Judge Howder noted that in a 1982 document, Goodrich informed its sales people that the

PVC industry is not healthy. Red ink continues to flow.[253]

Respondents similarly maintain that during the recession, the PVC market suffered from "substantial excess capacity and poor financial returns" (RPF 353 *in camera*), and that profits in the PVC industry have been poor since the acquisition.[254] A number of industry witnesses testified that the PVC industry is highly competitive. IDF 248.

Two factors limit the probative value of this evidence. First, repondents' basis for their conclusion that the PVC industry is competitive is for the most part simply the testimony of industry

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[243] *United States v. General Dynamics Corp.*, 415 U.S. 486, 504 (1974), *citing FTC v. Consolidated Foods Corp.*, 380 U.S. 592, 598 (1965); *United States v. E.I. du Pont de Nemours & Co.*, 353 U.S. 586, 597 *et seq.*, 602 *et seq.* (1957); *United States v. Continental Can Co.*, 378 U.S. 441, 463 (1964); *accord, Weyerhaeuser Co.*, 106 F.T.C. at 284 n.59.

[244] *United States v. General Dynamics Corp.*, 415 U.S. at 504–05.

[245] *HCA v. FTC*, 807 F.2d at 1384, *citing Lektro-Vend Corp. v. Vendo Co.*, 660 F.2d 255, 276 (7th Cir. 1981).

[246] *HCA*, 106 F.T.C. at 486 n.17.

[247] *British Oxygen Co.*, 86 F.T.C. 1241, 1365 n.26 (1975), *rev'd and remanded on other grounds sub nom. BOC International Ltd. v. FTC*, 557 F.2d 24 (2d Cir. 1977); *see also United States v. Philadelphia National Bank*, 374 U.S. at 366–67.

[248] Klass, Tr. 5725–27; Kaserman, Tr. 2446–48. An additional complication is that the accounting profit data usually available from industry firms is much less accurate measure of industry performance than economic profits data, and frequently diverges quite significantly from economic profit data. *B.A.T. Industries, Ltd.*, 104 F.T.C. 852 (1984).

[249] *United States v. General Dynamics Corp.*, 415 U.S. at 505, *quoting FTC v. Consolidated Foods Corp.*, 380 U.S. at 598.

[250] *Champion Spark Plug*, 103 F.T.C. 546, 628–30 (1984). The Commission adopted Judge Timony's decision and order as its own. *Id.* at 639–40.

[251] *BASF Wyandotte Corp.*, 100 F.T.C. 261, 428–429 (1982).

[252] *HCA*, 106 F.T.C. at 501–02.

[253] IDF 247 *in camera*, *quoting* RX 186F *in camera*.

[254] RPF 355 *in camera*, *citing* CX 527; CX 186F; RX 132C; RX 7160; Disch, Tr. 706–07; H. Wheeler, Tr. 1736; DiLiddo, Tr. 3250, 3419.

representatives. Industry executives, well aware of the antitrust laws, are unlikely to testify otherwise. Second, much if not all of the "excess capacity and poor financial returns" respondents identify is probably attributable to the 1982 recession. *See* IDF 74. There is no guarantee that the price competition that respondents have identified will continue, now that industry demand is expanding again, and PVC producers are once again operating at relatively high capacity levels. *See* IDF 75.

We need not evaluate respondents' performance evidence for the PVC market in any greater detail, however, because we have concluded that the acquisition is not likely to lessen competition substantially in the PVC market.

B. VCM Market

Respondents similarly argue that the VCM market is "highly competitive," and that the VCM business has been characterized by intense competitive pricing, and "has been unprofitable in the recent past." [255] However, respondents' performance evidence does not rebut the Commission's finding of liability in the VCM market, for three reasons. First, respondents' primary basis for these conclusions is the generalized testimony of VCM industry representatives that the industry is competitive and the acquisition "did not enhance the likelihood of anticompetitive behavior." RPF 460–66 *in camera*. Given the interest of industry participants in establishing that their industry is highly competitive, this sort of generalized testimony is not particularly probative.

Second, the dramatic effects of the recession make it difficult to reply upon respondents' performance evidence, because the business downturn probably would have forced even a monopolist to reduce prices. There is no guarantee that the limited competition that respondents assert exists will continue now that demand conditions have improved substantially. Evidence from earlier periods suggests that the recession probably had only transitory effects on price and profit levels. For example, a 1977 Goodrich document states:

> The market conditions are such that the suppliers of EDC [ethylene dichloride] and VCM are in a strong position to control the price and terms under which these materials are purchased.

CX 17Z14 *in camera*. Similarly, a 1978 Occidental document complains about "[s]trong marketplace discipline by the VCM producers." CX 524V *in camera*. And a 1980 Firestone document concludes that

> the Company's monomer [VCM] suppliers were able to demand prices resulting in high profits for themselves regardless of the conditions of the polymer market upon which the Plastics Division was dependent for its profit.

CX 503B.

Third, the post-acquisition structural evidence makes respondents' post-acquisition performance evidence less persuasive. Since the acquisition, the number of firms in the VCM market has declined from eleven to nine; the HHI for nameplate capacity has increased from 1529 to 1632 as of January 1985; and practical production capacity has increased from 1552 to 1650.[256] For these reasons, respondents' performance evidence does not rebut the presumption of anticompetitive effects drawn from the structural data.

VI. Relief

The attached Final Order is designed to remedy the anticompetitive effects arising from the acquisition. More particularly, Paragraph II of the Order directs Goodrich to divest the VCM Plant located at La Porte, Texas—together with associated assets, rights and privileges secured from Diamond, and all additions and improvements added by Goodrich—within one year of the effective date of the Order. Divestiture is to be made subject to the prior approval of the Commission. Paragraph III requires Goodrich to provide the acquirer with technology relating to the plant, and to provide VCM know-how for a period of one year. These requirements are reasonably related to ensuring that the La Porte VCM Plant is reestablished as a viable competitive entity.[257] Paragraph IV requires Goodrich to assign all sales and supply contracts for the plant to the acquirer. Paragraph V provides for the appointment of a trustee to divest the plant if Goodrich fails to comply with the divestiture requirements.

Paragraph VI prohibits Diamond from interfering with the relief the order prescribes, and for a period of five years requires Diamond to continue to provide utilities and other support services previously provided to the La Porte VCM Plant, and to afford the plant continued access to and use of the pipelines connected to the plant. Paragraph VII requires Goodrich—for a ten-year period—to secure Commission approval prior to making certain acquisitions of VCM manufacturing assets in the United States. Paragraph IX provides in particular that prior Commission approval is required prior to retransfer of the VCM plant from Goodrich to Diamond, and—for a period of three years—prior to its divestiture by Diamond to a third party. Finally, Paragraphs VIII, X, and XI impose notification and reporting requirements upon both respondents.

The relief embodied in the order is reasonably related to the violation of section 7 of the Clayton Act that the Commission has identified. In section 7 cases, the principal purpose of relief "is to restore competition to the state in which it existed prior to, and would have continued to exist but for, the illegal merger."[258] In this case, divestiture of the La Porte VCM plant represents the most effective means of achieving that objective.[259] As long as Goodrich continues to operate the La Porte VCM Plant, the anticompetitive effects identified *supra* will persist. For similar reasons, the Commission directed the divestiture of the acquired assets in *AMI* and *HCA*.[260]

A ten-year prior approval provision is warranted in this case with respect to Goodrich because of the structural characteristics of the VCM market. If Goodrich divests the La Porte VCM Plant to a firm not currently in the United States VCM market—the divestiture that would reduce market concentration most significantly—the HHI for nameplate capacity would fall to approximately 1350. *See* Table V, *supra*. Without the La Porte VCM Plant, Goodrich will own one VCM plant—located at Calvert City, Kentucky—with a nameplate capacity of one billion pounds. *See* page 5, *supra*. In 1984, this represented approximately 11 percent of total domestic VCM nameplate capacity. If Goodrich were then to acquire the smallest domestic VCM producer—and in 1984 that was Conoco (now Vista),

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[255] RPF 460–463 *in camera*, *citing* RX 428E *in camera*; Disch (Tenneco), Tr. 697–99; Kienholz (PPG), Tr. 849–50; L. Wheeler (Shell), Tr. 991, 1025, 1051; Taylor (Dow), Tr. 1672; H. Wheeler (GenCorp), Tr. 1766–67; DiLiddo (Goodrich), Tr. 3327.

[256] *See* pages 58–61, *supra*; IDF 266.

[257] *See, e.g., Kaiser Alum. & Chem. Corp.*, 93 F.T.C. 764, 855–58 (1979), *remanded on other grounds*, 652 F.2d 1324 (7th Cir. 1981); *Ekco Products Co.*, 65 F.T.C. 1163, 1212–15 (1964), *aff'd*, 347 F.2d 745 (7th Cir. 1965).

[258] *RSR Corp.*, 88 F.T.C. 800, 893 (1976), *aff'd*, 602 F.2d 1317 (9th Cir. 1979), *cert. denied*, 445 U.S. 927 (1980); *see Brunswick Corp.*, 96 F.T.C. 151, 155 (1980), *aff'd sub nom. Yamaha Motor Co., Ltd. v. FTC*, 657 F.2d 971 (8th Cir. 1981), *cert. denied*, 456 U.S. 915 (1982).

[259] *See Ford Motor Co. v. United States*, 405 U.S. 562, 573 (1972); *HCA*, 106 F.T.C. at 513; *AMI*, 104 F.T.C. at 221; *RSR Corp.*, 88 F.T.C. at 893.

[260] *HCA, 106 F.T.C. at 513; AMI*, 104 F.T.C. at 226–27.

with a nameplate capacity of 6.78 percent (*see* Table V, *supra*)—its share would rise to 17.78 percent, and the relevant HHI for nameplate capacity would increase by approximately 150 points, to 1500. Such an acquisition would almost certainly violate section 7 of the Clayton Act, for essentially the same reasons that Goodrich's acquisition of the La Porte VCM plant constitutes a violation of section 7. As the Commission has previously indicated, "it is industry market structure and market conditions * * * that determine the appropriateness of imposing a prior approval requirement in a section 7 case." [261] Here, the prospect that *any* acquisition by Goodrich of any firm in the United States VCM market would almost certainly violate section 7 warrants the prior approval requirement.

Several factors make it essential to require Diamond to comply with certain provisions of the order. Pursuant to the Goodrich/Diamond purchase agreement, a Commission order requiring Goodrich to divest the La Porte VCM plant will permit Goodrich to require Diamond to reacquire the plant. CX3Z505–Z507, cl. 4 *in camera*. The agreement also gives Diamond a right of first refusal to purchase the stock or assets of DSPC, including the La Porte VCM plant, in the event of a divestiture order. *Id.* Diamond has indicated that if it were required to reacquire the assets it sold to Goodrich, it would operate them "only until [it] could resell the assets to someone who is committed to being in the plastics business * * *" [262] Because the La Porte plant is approximately the same size as Goodrich's Calvert City VCM plant, its conveyance to any firm in the VCM market would raise concerns similar to those that would be attributable to any other acquisition by Goodrich in that market. The order therefore requires prior Commission approval of any subsequent divestiture of the La Porte plant by Diamond within three years after Diamond reacquires the plant. The order also prohibits Diamond from interfering with the divestiture because, through its right of first refusal, Diamond could theoretically prevent Goodrich from divesting the La Porte VCM plant to another buyer.[263] Order provisions of this sort—directed against the seller in an acquisition that violates section 7 of the Clayton Act—may be imposed when necessary to implement effective relief.[264]

The Commission believes that the foregoing order provisions lie well within its authority. The general standard is that "the courts will not intervene [with a Commission order] except where the remedy selected has no reasonable relation to the unlawful practices found to exist." [265] Once "the government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor." [266]

VII. Conclusion

A. PVC Market

The Commission has determined to affirm the decision of Judge Howder with respect to the PVC market. Environmental restrictions have created higher costs for new entrants and expansion than confronted incumbent capacity, and thus constitute a barrier to entry sufficiently substantial to make collusion within the PVC market feasible.[267] However, other structural factors establish that, on balance, the acquisition is not likely to have anticompetitive effects in the PVC market. The acquisition increased market HHIs to only 1098 for nameplate capacity, 1079 for practical production capacity, and an estimated 1020 for actual production levels. *See* pages 54–55, *supra*. As we noted *supra*, these post-acquisition concentration data are only barely sufficient to create a presumption of anticompetitive effects in the PVC market. Because they fall within the lower end of the mid-range of the Department of Justice Merger Guidelines, the Commission must carefully evaluate a number of other industry characteristics in order to determine whether the acquisition may in fact substantially lessen competition. [268]

On balance, other industry characteristics refute the weak presumption of anticompetitive effects in the PVC market created by the concentration data. First, PVC is relatively heterogeneous. Second, costs vary significantly from one PVC producer to another, as a consequence of differing reactor sizes, resin production emphases, and transportation costs. Third, the higher price elasticity of demand for some PVC end products may constrain any effort among PVC producers to collude. These industry characteristics make it unlikely that the acquisition had any anticompetitive effects in the PVC market.

B. VCM Market

The Commission has determined to reverse the decision of Judge Howder with respect to the VCM market. Environmental restrictions that create higher costs for new entrants and expansion than confronted incumbent capacity constitute a barrier to entry. Moreover, the substantial time required to enter, the need to capture a substantial share of industry sales in order to achieve minimum economies of scale, and the sunk character of an entry investment constitute impediments to entry. These contraints are sufficiently substantial to make collusion within the VCM market feasible.[269] Moreover, the acquisition substantially increased concentration in the VCM market: by 226 points to 1529 for nameplate capacity; by 253 points to 1552 for practical production capacity; and by 304 points to 1663 for actual production levels. *See* page 61, *supra*. The acquisition raised four-firm concentration levels to 70.8 percent for nameplate capacity, 71.3 percent for practical production capacity, and 72.59 percent for actual production levels. *See* Table V, *supra*. These concentration data create a relatively strong presumption of anticompetitive effects.[270]

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[261] *HCA*, 106 F.T.C. at 514; *accord*, *AMI*, 104 F.T.C. at 221–227.

[262] Diamond Shamrock Chemicals Company Motion for Dismissal and Supporting Argument (Aug. 31, 1984), at 12.

[263] If Diamond has accurately portrayed its disinterest in reacquiring the plant, then it is unlikely, however, to interfere with the sale of the plant to another party.

[264] *See Dean Foods Co.*, 70 F.T.C. 1146, 1293–94 (1966), *modified as to order*, 71 F.T.C. 731 (1967); *see also United States v. Coca Cola*, 575 F.2d 222, 227–31 (9th Cir.), *cert. denied*, 439 U.S. 959 (1978) (sellers may be included in section 7 remedies). There is thus no need to address complaint counsel's alternative argument (*see* CAB at 71) that the agreement to "dismantle" DSPC violated section 5 of the Federal Trade Commission Act.

[265] *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 613 (1946); *accord, e.g., HCA v. FTC*, 807 F.2d at 1393.

[266] *United States v. E.I. DuPont de Nemours & Co.*, 366 U.S. 316, 334 (1961).

[267] *E.g., FTC v. Warner Communications, Inc.*, 742 F. 2d 1156, 1163–64 (9th Cir. 1984); *Marathon Oil Corp. v. Mobil Corp.*, 669 F. 2d 378, 380–81 (6th Cir. 1981); *See Weyerhaeuser Co.*, 106 F.T.C. at 287.

[268] *Weyerhaeuser Co.*, 106 F.T.C. at 280.

[269] *E.g., FTC v. Warner Communications, Inc.*, 742 F. 2d 1156, 1163–64 (9th Cir. 1984); *Marathon Oil Corp. v. Mobil Corp.*, 669 F. 2d 378,380–81 (6th Cir. 1981); *see Weyerhaeuser Co.*, 106 F.T.C. at 287.

[270] *E.g., United States v. Philadelphia National Bank*, 374 U.S. 321, 363 (1963) (increased C_4 to 78 percent); *United States v. Waste Management, Inc.*, 743 F. 2d 976, 981 (increased C_4 to 67.1 percent); *FTC v. Warner Communications, Inc.*, 742 F. 2d 1156, 1163 (9th Cir. 1984) (increased C_4 to 75 percent); *Weyerhaeuser Co., 106 F.T.C. at 279 (increased* C_4 to 57.8 percent); *Grand Union Co.*, 102 F.T.C. at 1056–58 (increased C_4 in thirteen markets to levels ranging from 49 percent to 72 percent) (*dictum*).

The other structural evidence in the record strengthens this presumption. First, a low price elasticity of demand strengthens that inference,[271] and the record evidence establishes that the price elasticity of demand for VCM is low. Second, VCM is a highly homogeneous product, with few if any differences from one firm to another. Third, cost functions for producing VCM are relatively similar from one firm to another. Fourth, the number and size of VCM buyers are not likely to constrain the pricing discretion of VCM producers. Fifth, the frequency, size and public character of VCM transactions are not likely to complicate collusive efforts. Sixth, demand and supply conditions in the VCM market are likely to remain relatively stable over the next few years. Seventh, vertical integration between VCM and PVC producers facilitates efforts to collude in the VCM market.

The foregoing structural factors strengthen the presumption that the acquisition is likely to have anticompetitive effects in the VCM market. The generalized and self-serving testimony of industry members that the industry is competitive does not rebut the strong evidence that the acquisition is likely to have anticompetitive effects. The attached order will remedy the anticompetitive effects of the acquisition by requiring Goodrich to divest the VCM plant it acquired from Diamond.

Issued: March 15, 1988.

CHAIRMAN OLIVER, CONCURRING IN PART AND DISSENTING IN PART

I. Introduction

I concur with the majority in its determination that "the acquisition is not likely to have anticompetitive effects in the PVC market." Although PVC appears to define a relevant antitrust market, a PVC conspiracy is unlikely because, *inter alia*, the PVC market is relatively unconcentrated, PVC is heterogeneous, production cost functions vary from one PVC producer to another, and successful monitoring would necessarily extend to the market for PVC products. Moreover, the acquisition does nothing that would substantially increase the likelihood of a PVC conspiracy.[1] However, I disagree with the majority's conclusion that the Goodrich acquisition may substantially lessen competition by creating an appreciably increased danger of collusion in the VCM market, and would affirm the Administrative Law Judge's order dismissing the case.

The VCM and PVC markets are closely related. PVC can be produced only from VCM, and almost all VCM is used to produce PVC. VCM produced and used by integrated firms is internally produced, internally shipped (often by pipeline) and internally priced. Because some VCM producers are integrated downstream into PVC production and others are not, there are basically three different groups that would be directly affected by collusion in either of these markets. First, there are the integrated VCM/PVC producers.[2] Approximately one half of VCM and PVC production comes from this group. Second, some firms produce only VCM for sale (nonintegrated VCM producers.[3] Third, there are nonintegrated PVC producers that must have a supply of VCM in order to operate.[4]

Tacit collusion in the VCM market would be difficult to achieve or maintain for several reasons. First, the incentives of the two groups of VCM producers in that market, integrated and nonintegrated firms differ materially, despite the majority's assumptions to the contrary.[5] The integrated VCM/PVC producers have a common interest in undercutting the PVC sales of the nonintegrated PVC producers which, if successful, would also erode any cartel price tacitly agreed on by the nonintegrated VCM producers. Second, collusion is only possible where price or output restrictions can be effectively monitored. For a VCM conspiracy to be successful in this case, all participants would have to be assured that the others were not cheating on the cartel price. However, the quantity of VCM produced and used by integrated firms cannot be directly observed by other firms. Levels of VCM output from integrated firms may only be monitored indirectly, from the sales of PVC resins and other PVC end products that the integrated firms market. But many of the same factors that make collusion difficult in the PVC market are also present in the VCM market, making the efforts of the nonintegrated VCM producers to monitor the integrated VCM PVC/VCM producers in their sales of PVC sufficiently difficult to defeat an attempt to cartelize the VCM market.

In evaluating whether a merger may substantially lessen competition,we necessarily attempt to make a prediction of the potential for certain future conduct. We need not achieve complete certainty in this predictive process, but unless we have a plausible theory and credible evidence explaining why a merger is likely to increase substantially the risk of collusion (or the degree of effective collusion) we have no basis under section 7 of the Clayton Act to find the merger illegal. Lacking any theory or evidence apart from somewhat increased levels of concentration, we have no basis for reversing the ALJ's holding that the acquisition is not likely to substantially lessen competition.

II. Incentives of Integrated and Nonintegrated Firms to Collude

The majority opinion concedes that an effective collusive strategy to obtain supracompetitive prices in the VCM market would require the participation of both the integrated VCM/PVC producers and the nonintegrated VCM producers.[6] The majority recognizes, however, that the nonintegrated VCM firms are at a disadvantage in reaching and enforcing tacit collusion because they cannot directly monitor the output or price of VCM that is internally consumed by the integrated VCM/PVC producers.[7] As a result, the majority opinion suggests that the nonintegrated VCM producers "can rely on the integrated firms as a group to monitor their integrated competitors." [8] In effect, then, the majority posits dual cartels, one among the nonintegrated VCM firms and another with the integrated VCM/PVC firms monitoring the PVC sales of one another, reaching overall agreement on VCM prices and output. Because of the adverse effect a collusive agreement would be likely to have on the nonintegrated PVC producers, however, the integrated VCM/PVC producers

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[271] *Marathon Oil Corp. v. Mobil Corp.*, 669 F. 2d at 381.

[1] When there is no threat of single firm market power, the controlling question is "whether the challenged acquisition is likely to hurt consumers by making it easier for the firms in the market to collude, expressly or tacitly, and therefore force prices above or further above the competitive level." *Hospital Corporation of America*, 106 FTC 361, 464 (1985), *aff'd* 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, ____ U.S. ____, 107 S.Ct. 1975, (1987).

[2] After the acquisition, these included Goodrich, Formosa, Georgia Pacific, Borden and Conoco.

[3] This group included Dow, Shell, and PPG after the acquisition at issue here.

[4] There were eight principal firms in this category after the acquisition: Air Products, CertainTeed, Keysor-Century, Occidental, Pantasote, Shintech, GenCorp, and Tenneco.

[5] *See* Majority Opinion at 94–96, 103–104.

[6] Majority Opinion at 94.

[7] *See* Majority Opinion at 99.

[8] Majority Opinion at 99. In effect, the collusive effort proposed by the majority would include agreement on open market sales among all VCM producers and a separate collusive agreement among the integrated VCM/PVC producers at the PVC level. For the whole scheme to work this latter agreement would have to consist of agreed upon prices and output levels of PVC that incorporated the cartel's "market" price for VCM.

would have a significant incentive to undercut any collusive efforts.[9]

As the majority recognizes, to remain in the market the nonintegrated PVC firms would have to accept increases in the price of VCM imposed by the cartel. Because VCM is used in a fixed proportion with other inputs to produce PVC, and there is no commercially available substitute for VCM, nonintegrated PVC producers could not shift to another imput. They would be forced to pay any supracompetitive price for VCM.[10] Since the demand for PVC is relatively inelastic, the nonintegrated PVC producers would probably be able to pass along much of the price increase. Unless they were able to pass along all of the price increase, however, their profit margins would necessarily decline, as would their sales volume.[11]

The nonintegrated PVC producers compete, of course, with the integrated VCM/PVC producers. Because the integrated VCM/PVC producers need not charge themselves the same VCM prices that would be forced on the nonintegrated PVC producers, they have the ability to undersell the nonintegrated PVC producers.[12] If the price of VCM rose, integrated VCM/PVC firms would have an incentive to raise PVC prices, but by a smaller amount than the nonintegrated PVC producers would have to charge to take account of the higher cartel price of VCM. In this way, integrated producers could enjoy both increased profits per unit and increased market share.

Integrated producers would face such incentives until the conspiracy failed, with nonintegrated PVC producers, squeezed by higher VCM costs and price competition in the PVC market, reducing VCM purchases and PVC sales or exiting the industry. A decrease in the market share of nonintegrated PVC firms would ultimately reduce the market of the nonintegrated VCM firms. As a result, the nonintegrated VCM firms only have an incentive to increase the price of VCM if they can be assured that the integrated VCM/PVC producers will not undersell the nonintegrated PVC producers. Unless there are strong assurances that this will be the case, nonintegrated VCM firms will not undertake a collusive strategy that results in eroding their own market share.

III. Ability of Nonintegrated VCM Firms To Monitor Integrated Firms

In order for a collusive strategy to succeed, VCM producers would not only have to develop a consensus on price and output levels,[13] they must also be able to enforce that tacit agreement. The necessary prerequisite for any retaliatory conduct is the ability to monitor the conduct of competitors and detect cheating on the cartel. The task of monitoring a collusive arrangement in the VCM market would be extremely difficult, and would fail for many of the same reasons the majority concludes that collusion in the PVC market is unlikely in this case.[14] In order to be successful, a VCM cartel would be required to observe the actions of the integrated VCM/PVC producers at three stages of the production process: First, open market sales of VCM; second, sales of PVC; and third, sales of products fabricated from PVC by those firms integrated further downstream into that stage.

Perhaps the easiest task of monitoring involves open market sales of VCM. If a consensus price could be established, nonintegrated VCM firms would be able to detect cheating by integrated firms selling to nonintegrated PVC producers at less than the cartel price. The opposite is also true, however. Integrated firms would be able to determine the market price being charged to nonintegrated PVC producers. To the extent that integrated firms can obtain some of these sales, they can obtain the benefits of the supracompetitive pricing being charged to the nonintegrated PVC producers. Similarly, knowing the market price for VCM, they are in a better position to undercut the price that the nonintegrated PVC firms ultimately charge.

As the majority recognizes, the nonintegrated firms are at a relative disadvantage in monitoring the integrated VCM/PVC producers. Because most of the VCM produced by the integrated firms is not sold on the market but consumed internally,[15] the only recourse of the nonintegrated VCM producers it to attempt to determine whether the integrated VCM/PVC firms are including the consensus VCM price in their PVC prices and producing the appropriate amount of PVC.

This task is likely to be quite difficult for the nonintegrated VCM producers to accomplish. First, there are a large number of purchasers of PVC resin that must be monitored.[16] Moreover, many PVC costs and outputs must be monitored. There are different grades of PVC and different quality levels within grades. In addition, individual plant operating costs and transportation costs vary. Thus the opportunities for the integrated firms to cheat are very great.[17]

The majority suggests that the nonintegrated VCM producers can use

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[9] Another point where the incentives of the VCM producers vary is in the situation where VCM producers are integrated further upstream into production of chlorine (and caustic soda). Other VCM firms have long term contracts to purchase chlorine at a fixed price.

VCM is produced from ethylene, a petroleum product, and chlorine. Chlorine is itself produced by applying an electrical current to brine, yielding 1.1 pound of caustic soda for every pound of chlorine. When there is a large demand and high price for caustic soda, as there was in 1980, excess chlorine is produced. As a result, chlorine costs for this group of integrated firms (e.g. PPG and Dow) will vary with the demand for caustic soda. *See, e.g.*, RX 57230 (Diamond Shamrock's cost for chlorine estimated to be a negative .1 cents per pound). Chlorine cannot be easily stored, and when excess chlorine is produced there is a strong incentive to use it in VCM production.

VCM production costs may therefore differ significantly between firms that purchase chlorine at prices set in long term contracts and integrated firms subject to fluctuations in chlorine production and chlorine prices. This factor increases the difficulty of colluding on VCM prices and output.

[10] Of course cartels in both the VCM and PVC markets are extremely unlikely to arise, because an entity controlling one stage of a multi-stage production process will earn the largest profit when the other stages perform competitively. *See, e.g.*, R. Posner and F. Easterbrook, *Antitrust Cases, Economic Notes and Other Materials* 803–07, 875–86 (2d ed. 1981).

[11] In the hypothetical case in which the demand for PVC was perfectly inelastic, PVC producers could pass on all of the price increase and would not experience a decline in their sales volume. The majority does not suggest that this hypothetical case exists in the real world.

[12] The integrated VCM/PVC firms also enjoy an advantage over a VCM cartel because they can vary in prices of the different grades of PVC that they sell. The nonintegrated VCM firms, by contrast, must sell all of their VCM at the supracompetitive price, and the nonintegrated PVC firms will have to pay for, and pass along, an increased price for all grades of PVC that they produce.

[13] The majority suggests that the integrated VCM/PVC producers would "passively welcome collusion in the [VCM] market—in the sense that they will profit from declining to increase VCM production in response to higher VCM prices . . . ." Majority Opinion at 96. They might profit even more by increasing their output, a step they are quite likely to take if that output cannot be readily observed.

[14] This presumes that a collusive strategy would be successful in raising prices in the first place. As the majority points out, pp. 85–89, the sales arrangements among the firms in the VCM and PVC market make them very sensitive to price fluctuations. If a group of firms attempted to create a cartel price for VCM, these efforts would be detected very quickly. Even if successful, however, the integrated VCM/PVC firms would still have an incentive to undercut the cartel price in their PVC sales.

[15] The use of pipelines contributes to the difficulty of determining directly the amount of VCM produced by the integrated VCM/PVC firms.

[16] A 1979 Goodrich study indicated that 300 PVC resin buyers accounted for 80% of the market. CX 53J–K.

[17] Even if the integrated firms can determine that other integrated firms are cheating (which may be quite difficult), it is still to their advantage to do so if the nonintegrated firms do not also learn this fact.

the nonintegrated PVC producers to assist in their efforts to monitor the PVC sales of the integrated VCM/PVC firms. However, if the nonintegrated PVC producers learn that they are being undersold, they would be likely to report that fact to the nonintegrated VCM producers. The nonintegrated PVC producers' only alternative to losing market share would be to demand lower prices from the VCM producers, which, if successful, would itself defeat the cartel.[18]

The final stage at which monitoring would be necessary in order to detect cheating on the cartel is in fabrication of products from PVC resins. Four of the five integrated VCM/PVC producers are vertically integrated further downstream into fabrication of products from PVFC.[19] As long as these integrated firms have the capability of substantially increasing their output of PVC fabricated products, successful implicit collusion in the VCM market would have to include agreement on the optimal amount of PVC to be produced, as well as the output and pricing of PVC fabricated products and concomitant monitoring. Unless the nonintegrated VCM producers are able to monitor price cutting by integrated firms at that stage, there is a significant opportunity for the integrated VCM/PVC firms to expand production of those end products and increase market share at the expense of the nonintegrated PVC producers. This is likely to be very difficult to monitor.

As a result, tacit collusion among all VCM producers would fail unless it is possible to monitor not only all open market sales of VCM to nonintegrated PVC producers, but also the PVC output of the integrated VCM/PVC producers, as well as their production of materials fabricated from PVC. The same factors that lead the majority to conclude that collusion is not a threat at the PVC level lead me to conclude that collusion at the VCM level is also not feasible.

IV. Conclusion

Unlike the majority, I believe that the vertical integration present in the VCM and PVC markets makes collusion on VCM extremely difficult, if not impossible. Not only do the integrated VCM/PVC producers have strong incentives to jointly undercut any cartel price for VCM, the process of detecting any cheating would be so complicated that it would not be likely to succeed. I would affirm the ALJ and dismiss the complaint.

Issued: March 15, 1988.

Separate Statement of Commissioner Azcuenaga, With Whom Commissioner Bailey Joins, Concurring in Part and Dissenting in Part

I concur in the opinion of the majority insofar as it finds that the acquisition by B.F. Goodrich of Diamond Shamrock Plastics Corporation from Diamond Shamrock Chemicals Company may substantially lessen competition in the market for vinyl chloride monomer ("VCM") in violation of section 7 of the Clayton Act. Unlike the majority, I would also find liability in the market for polyvinyl chloride ("PVC"). I disagree with the presumptions based on concentration data that the majority employs and with their analysis of competitive conditions in the market for PVC.

As the majority recognizes, the level of and increase in concentration resulting from this acquisition in both the VCM and PVC markets create a rebuttable presumption of anticompetitive effects. The Department of Justice 1984 Merger Guidelines divide the range of concentration as measured by the Herfindahl-Hirschman Index ("HHI") into three tiers: Unconcentrated, moderately concentrated and highly concentrated. Goodrich's acquisition increased the HHI by 221 points to 1131 [1] in the PVC market and by 304 points to 1663 in the VCM market.[2] Both markets fall within the moderately concentrated range (post-acquisition HHI between 1000 and 1800), in which the Department has said it is more likely than not to challenge acquisitions that increase the HHI by 100 points or more. When an acquisition falls in this middle range, the Guidelines anticipate a careful review of competitive conditions, and the Commission has said that an "especially careful review of a number of industry characteristics in addition to concentration" is needed to assess the likely competitive effects of the transaction. *Weyerhaeuser Co.*, 106 F.T.C. 172, 280 (1985).[3]

Having established that the concentration in each market falls within the middle tier, the majority then subdivides that tier and assigns to each segment a different presumption of liability before proceeding to an analysis of other competitive conditions. Although both markets are moderately concentrated, the majority concludes that because the PVC market is moderately concentrated "only by the barest of margins," the presumption of anticompetitive effects in that market is "even weaker." Slip op. at 57–58. The slightly higher numbers in the VCM market create a "relatively strong presumption of anticompetitive effects," according to the majority, which can be rebutted only by "relatively strong evidence from other factors." Slip op. at 63. This emphasis by the majority on relatively minor differences in concentration statistics suggests that the numbers have a scientific predictive value that does not exist.

The Commission often has qualified the significance of concentration data as a predictor of market power, *e.g.*, FTC Statement Concerning Horizontal Mergers, 2 Trade Reg. Rep. (CCH) ¶ 4516, at 6901–3 (June 14, 1982) ("FTC Statement"), and the Merger Guidelines also make clear that "the numerical divisions suggest greater precision than is possible with the available economic tools and information." Section 3.1. We use market share data in a section 7 case "as an important preliminary surrogate measure of market power," FTC Statement at 6901–3, but statistics "provide only the starting point for analyzing the competitive impact of a merger." Merger Guidelines § 3.11. Because of the limited predictive power of market share and concentration data, a careful evaluation of other indicators of market power usually is necessary.

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[18] The nonintegrated PVC producers have an incentive to seek lower prices in order to maintain or increase their competitive position in any event, and might well claim that they are being undersold even if they are not.

[19] Goodrich estimated that Borden utilized 39% of its PVC capacity internally. RX 200D. Borden's internal use of PVC consisted primarily of the production of PVC film for meat and produce packaging and pallet stretch wrap. Approximately 29% of Borden's 1982 PVC capacity was devoted to this use. The remaining 10% of captive PVC production was utilized in the production of coated fabrics. RX 200E.

Goodrich's own captive PVC production was used to make pipe, windows, packaging, siding, wire and cable. In 1981 Goodrich had 46.6% of the siding market, 15.6% of the pipe market, 16.5% of the window market, 3.4% of the packaging market, and 30.0% of the wire and cable market.

Formosa's captive production of PVC is used to make pipe, film, and sheet. RX 247A.

[1] I.D.F. 53 *in camera;* slip op. at 54 (based on actual production). These figures correctly attribute all of Diamond Shamrock's Deer Park PVC plants to Goodrich, because the sale of Deer Park #5 to Goodrich precluded the sale of the other Deer Park plants to another firm and Diamond agreed, until the plants were closed, to operate them for Goodrich. I.D.F. 10–14; slip op. at 7–10 & n. 12. Goodrich perceived the arrangement as "the only option that keeps Diamond from being a disruptive force in the market place." *Id.* at 10.

[2] I.D.F. 262; slip op. at 61 (based on actual production).

[3] In *Weyerhaeuser*, the challenged acquisition increased the HHI by 211 points to 1166, "within the lower end of the mid-range of the Department of Justice Merger Guidelines." 106 F.T.C. at 280.

Although the Commission has said that "more persuasive" evidence will be needed to rebut a *prima facie* case when a market is highly concentrated than when the market is moderately concentrated, *Grand Union Co.*, 102 F.T.C. 812, 1055 (1983) (dicta),[4] I know of no authority to support the majority's differing presumptions when concentration data in two separate markets, both of which are moderately concentrated, are similar to the two before us. The Merger Guidelines do not establish a different standard of review for mergers with different market share data, except to suggest, as the Commission did in *Grand Union*, that the presumption of anticompetitive effects based on statistics will be difficult to rebut when the market is highly concentrated.[5]

The majority's presumptions add nothing to merger analysis in terms of predictability or ease of application. The majority infers that in the *Weyerhaeuser* case, the Commission decided that the concentration data created only a weak presumption of anticompetitive effects, and the majority suggests that non-statistical evidence to rebut the presumption of illegality in the PVC market "need not be as strong as it was in *Weyerhaeuser*." Slip op. at 58. In *Weyerhaeuser*, the Commission dismissed the complaint based on an evaluation of several market characteristics including, in particular, ease of entry. I see no easy or useful way to compare the weight of evidence in *Weyerhaeuser* concerning industry characteristics such as ease of entry in the west coast market for corrugating medium (a paper product) with the weight of the non-statistical evidence concerning the PVC market, in which the majority finds substantial barriers and impediments to entry. Slip op. at 31. Simply to attempt such a comparison between highly fact-specific cases would complicate merger analysis even further without any apparent off-setting benefits.

The terms used by the majority may well raise more questions than they put to rest. Is the presumption of liability in the market for VCM "relatively strong" only as compared to the "even weaker" presumption in the PVC market? In the context of the Herfindahl-Hirschman Index, does "relatively strong" mean "slightly weak," "somewhat strong," "quite strong" or plain old everyday "average?" How does the "relatively strong" presumption for VCM compare to the presumption that applies when the HHI rises 100 points and exceeds 1800? It might be possible to work through this exercise, but further attempts to refine the presumptions stemming from concentration figures are unlikely to be useful until those figures can be shown to correspond more precisely to market power. The temptation to seek comfort from the apparent certainty of numbers is understandable, but we should be wary of false comforts.

In addition to finding that the PVC and VCM markets are moderately concentrated, the majority finds "substantial barriers and impediments to entry" in both markets and finds that "fringe firms are unlikely to constrain collusive conduct" in either market. Slip op. at 31. The only significant difference between the two markets for the purpose of merger analysis is the number of customers. PVC purchasers number in the hundreds, I.D.F. 216; the only purchasers of 96% of VCM consumed in the United States are the small number of firms that produce PVC. I.D.F. 289. These facts suggest that collusion would be easier in the PVC market than in the VCM market, if, as the majority correctly assumes, slip op. at 84–85, collusion is easier for sellers in markets with a large number of buyers.

The majority nevertheless identifies three reasons (in addition to lower concentration) for concluding that there is no violation in the market for PVC. First, PVC is said to be "relatively heterogeneous." Second, the majority finds that costs "vary significantly" among PVC producers. Finally, although the price elasticity of PVC is "relatively low," the majority concludes that the ability of PVC producers to raise prices "may be constrained to some degree by the higher price elasticity of demand" for PVC end products. Slip op. at 113. None of these conclusions is supported by the record. In fact, PVC is a homogeneous product, the costs of producing PVC do not vary significantly among firms and the elasticity of demand for PVC is low and unlikely to constrain collusion.

We are charged with responsibility for making predictive judgments under section 7 on the basis of all the relevant facts.[6] The fact-specific analysis of the two markets at issue here discloses no material differences between them and shows that anticompetitive effects are likely in each. Indeed, unless one accepts the majority's differing presumptions based on market share and concentration data, the case for liability in the PVC market is at least as strong as the case for liability in the VCM market.[7]

1. Homogeneity of PVC

The majority concludes that PVC is "considerably more heterogeneous" (compared, presumably, to VCM), because it is produced in three grades and because producers face differing transportation costs. Slip op. at 65–66. This heterogeneity, according to the majority, is one of the reasons collusion is unlikely in the PVC market. I disagree. On this record, the PVC market is not one in which product differentiation is important.

In terms of its physical characteristics, PVC is boringly homogeneous. PVC is classified in three general, differently priced categories—pipe, general purpose and specialty PVC. Pipe grade PVC historically has been the lowest priced of the three grades. General purpose PVC sells at a small premium over pipe resin, and specialty resin usually commands a small premium over general purpose PVC.[8] More than 75% of bulk and suspension PVC is considered by industry members to be a "commodity" product, with no significant quality differences among producers. I.D.F. 87 & 90. Although there may be some quality differences among specialty resins produced by different firms, industry witnesses testified that any producer could deliver an acceptable substitute specialty resin.[9]

Industry witnesses also testified that buyers of commodity grade PVC will switch suppliers over small differences in price, I.D.F. 87 & 90; R.A.B. at 36, and that no specialty resin supplier can command a price higher than that of competing suppliers of the same grade. I.D.F. 88. The willingness to switch

[4] In *Grand Union Co.*, the Commission found no Section 7 violation "for reasons other than the level of concentration and . . . market share." 102 F.T.C. at 1056.

[5] Merger Guidelines § 3.11(c). The Commission has said that the value of non-market share evidence will be high when it consistently points in the same direction, particularly when the market shares are in the low and moderate ranges, and that non-market share factors may be given less weight when concentration is high. FTC Statement at 6901–4.

[6] "(C)onsiderations [other than concentration statistics] often do not lend themselves to precise mathematical expression, but they can be more important than quantitative measures of concentration." Echlin Manufacturing Co., 105 F.T.C. 410, 483–84 (1985).

[7] If this were an exercise in prosecutorial discretion, the practical effect of the majority's decision in the PVC market would be to raise the dividing line identified in the Merger Guidelines between unconcentrated and moderately concentrated markets.

[8] H. Wheeler 1750–51; DiLiddo 3268; Schaefer 1076; R.A.B. at 36.

[9] Schaefer 1076; Becker 1331–33.

suppliers over small price differences and the inability of any supplier to obtain a price premium tend to confirm that PVC is homogeneous within grades.[10] Buyers would be unwilling to switch suppliers to gain small price advantages if there were other important differences in the PVC produced by different firms, and firms could command price premiums if they offered a unique product.[11] The record shows that the physical qualities of PVC place it as the homogeneous end of the product spectrum and do not impair the ability of PVC firms to collude.[12]

The majority also treats the cost of transporting PVC as an aspect of heterogeneity and concludes that transportation cost differences among PVC firms are likely to complicate collusion. Slip op. at 68 & 80. To support its conclusion, the majority simply recites the fact that PVC plants are situated in various locations around the country. Slip op. at 68–69.[13] This information, however, tells us nothing, because the record does not show the locations of the PVC customers served by the PVC plants. In fact, the record is largely silent as to the cost of shipping PVC to customers. In more than 5000 pages of testimony, one witness testified that "freight and other things" could provide "small differences in pricing,"[14] and the respondents' economic expert asserted, without citing any supporting material, that locational differences were "likely to affect" the cost of serving customers.[15]

Even if the cost of shipping PVC to customers differs among firms, any differences are unlikely to be sufficient to diminish the likelihood of collusion in the industry. If transportation cost differences were significant, we would expect to see a series of regional markets. Instead, the record shows that the market is national,[16] that PVC producers sell in the national market on the basis of delivered price and that price differences among suppliers are as small as one-quarter to one-half cent per pound. These facts suggest that transportation costs do not cause substantial cost differences among firms that would complicate collusion.

2. Costs of Producing PVC

The majority concludes that the costs of producing PVC vary significantly among firms, making collusion more complicated and, therefore, less likely. The differing costs identified by the majority are the costs of operating reactors of different sizes and the costs of transporting PVC to customers. Slip op. at 77–78. As discussed in the section above, differences in the cost of transporting PVC, which are also treated by the majority as an aspect of heterogeneity, are insignificant. Although operating costs may vary among firms, the record also does not support the majority's conclusion that the differences are significant.

PVC reactors of different sizes have different production costs, but, as the majority recognizes, production costs do not vary within grade but "from one PVC resin grade to another." Slip op. at 79. Commodity PVC, which accounts for about 75% of industry sales, is produced in large reactors. Industry witnesses testified that the costs of producing PVC in large reactors are similar among firms. *See* slip op. at 78–79. Smaller reactors operate at a cost disadvantage when compared to large reactors, but smaller reactors produce specialty PVC resins, which occupy a special niche in the market and enjoy a price premium over commodity PVC resins. Indeed, one of Diamond Shamrock's goals in the PVC market was to occupy the higher priced specialty market niches,[17] and Diamond Shamrock's position in the specialty resin market was an attribute that made the acquisition attractive to B.F. Goodrich.[18] The cost differences related to different size reactors are likely to be significant, but those cost differences are unlikely to frustrate collusion when firms face similar costs for the same grades of PVC.

To show that PVC firms face significantly different operating costs, the majority cites RX 1168A–B, *in camera*. This exhibit is based on a "cost study" prepared by a Goodrich employee, who estimated the costs of other firms but did not have access to actual cost data from any firm except Goodrich itself.[19] Not surprisingly, the study shows a range of operating costs for PVC plants that is virtually identical to the range of actual costs at Goodrich's PVC plants. The range of costs shown for competing firms (and cited by the majority) is 14.30 cents per pound to 21.94 cents per pound. The same document shows that Goodrich's operating costs for its PVC plants ranged from 14.30 cents to 21.53 cents per pound.[20] This document at best supports a conclusion that there may be substantial intra-firm cost variations, but it tells us nothing about cost differences among firms or their impact on competition.[21]

The record shows that PVC producers consistently agree to meet the lower prices of their competitors, which a firm presumably would not do if it suffered a persistent and significant cost disadvantage. On this record, I conclude that although the costs of producing PVC may differ among firms, the differences are not significant and are not likely to make collusion difficult.[22] As the majority observes in discussing the costs of producing VCM, "[a]lthough respondents have identified some minor differences [among firms], absolute congruence is not needed to heighten the likelihood of" collusion. Slip op. at 83.

3. Price Elasticity of Demand for PVC

The majority also concludes that "although the price elasticity of demand for PVC is * * * relatively low," attempts to collude on the price of PVC may be constrained by the elasticity of demand for end products manufactured

[10] DiLiddo 3372; Disch 707–09; Schaefer 1200–02; McMath 1951. These witnesses testified that PVC buyers will change suppliers for price differences as low as one-quarter and one-half cent per pound.

[11] The respondents' economic expert testified that the physical heterogeneity of PVC was "not severe," as evidenced by the lack of systematic price discrimination. Klass 5363.

[12] *See* United States v. Container Corp., 393 U.S. 333, 336 (1969) ("While containers vary as to dimensions, weight, color, and so on, they are substantially identical, no matter who produces them, when made to particular specifications."); FTC v. Bass Brothers Enterprises, Inc., 1984–1 Trade Cas. (CCH) ¶ 66,041, at 68,612 (N.D. Ohio 1984) ("Carbon black is a homogeneous, fungible product. Although it is produced in numerous different grades . . . in fact nearly all of the producers produce basically the same grades and types.").

[13] The majority also cites RX 1168, slip op. at 69 n.152, but this document is based on RX 245 and does not show the actual costs of firms. *See* notes 19 & 21 *infra* & accompanying text.

[14] H. Wheeler 1749; *see also* Weber 1800.

[15] Klass 4311.

[16] The parties stipulated that the appropriate market is national, and the majority found that a national market "is consistent with the record evidence." Slip op. at 15.

[17] Becker 1327–28; Weber 1794–96; Arp 3519.

[18] DiLiddo 3205–06, 3209, 3211–13 *in camera*; *see* slip op. at 8–10.

[19] RX 245 *in camera*, which contains neither calculations nor method of calculation, was based on unspecified information from "public sources" and an employee's "best estimates" from those sources. DiLiddo 3225. RX 1168A–B, cited by the majority to show different PVC production costs, slip op. at 80 n.179, is based on and has the same deficiencies as RX 245.

[20] This difference of 7.64 cents apparently reflects the difference between operating large reactors in which commodity resins are produced and operating smaller reactors in which specialty resins are produced. *See* slip op. at 79 n.177.

[21] Even the respondents' economic expert testified that the numbers provided on RX 245 *in camera* should not be viewed as "hard numbers." Klass 5323.

[22] Nor do differing degrees of vertical integration suggest different production costs. In discussing PVC production costs, the respondents' economic expert said that if costs for integrated firms were clearly lower, then nonintegrated firms would not be able to survive. He concluded that the data in the record "clearly indicate that there is not such a uniform advantage." Klass 5337–38.

from PVC. Slip op. at 113.[23] The record, however, shows not only that the elasticity of demand for PVC is low, but also that the price of PVC could be raised above competitive levels without causing the purchasers of end products to switch to other products. Industry witnesses testified that changes in PVC prices do not affect the demand for products made from PVC.[24] For example, a 1983 B.F. Goodrich study, quoted by the majority, slip op. at 74–75, stated:

> PVC pipe manufacturers appear to have plenty of room for price increases before approaching the price levels of most competing materials. (Even if the prices were identical, PVC would still have the added advantage of lower installed cost.)

CX 247A, *in camera*.

At some point, it is no doubt true that an increase in the price of PVC would cause some consumers to substitute cheaper products for products made from PVC, but the record suggests there is ample room before that point is reached for a successful agreement to raise prices above competitive levels.

4. Vertical Integration

The respondents maintain that the different degrees of vertical integration among PVC firms and among VCM firms would make collusion more difficult in either market.[25] Aspects of vertical integration, like other aspects of market structure, may indeed affect the ease of reaching or enforcing a collusive agreement. *See* R. Posner, *Antitrust Law* 60 (1976); F. Scherer, *Industrial Market Structure and Economic Performance* 204–05 (2d ed. 1980). The respondents, however, have not gone appreciably beyond general assertions of theory to show why in this case, where other relevant facts consistently point to the ease of collusion in both the PVC and VCM markets, vertical integration nevertheless makes collusion unlikely.

I find confusing the majority's lengthy response to the respondents' vertical integration argument, which gives the argument more credit than is due.[26] I do agree, however, with the majority's conclusion that both integrated and nonintegrated producers of VCM have strong incentives to collude and could readily detect cheating from a collusive agreement. If, as the majority concludes, PVC firms could accept and pass on to their customers a collusive VCM price increase, slip op. at 111, it must also be true that they could pass on a collusive PVC price increase.[27] The majority opinion therefore suggests, and I agree, that vertical integration does not deter the ability of PVC firms to collude.

An analysis of the record shows conditions that are conducive to collusion in the PVC market and in the VCM market. Although we can speculate on the extent to which the interests of integrated and nonintegrated firms might complicate collusion, the record shows nothing about differing incentives or other differences stemming from vertical integration that suggests that collusion would be unlikely in either market.

With respect to the market for PVC, I dissent.

Issued: March 15, 1988.

[FR Doc. 88–8019 Filed 4–13–88; 8:45 am]

BILLING CODE 6750–01–M

[23] This conclusion is inconsistent with the majority's statements that "the price elasticity of demand for most PVC end products is relatively low," slip op. at 75, and that "the demand for PVC is sufficiently inelastic to make it likely that an increase in VCM prices can profitably be passed along to PVC customers." Slip op. at 111. If PVC producers can pass on a cost increase (such as a VCM price increase), then presumably they could also profitably pass on a collusive PVC price increase.

[24] Schaefer 1141; Disch 664–80; Becker 1325–36; H. Wheeler 1753–54; Weber 1811–12, 1828. The majority is correct in rejecting the assertion of the respondent's expert witness that PVC is price elastic. Slip op. at 75 n.168.

[25] The respondents argue that differing degrees of vertical integration increase the number of areas with respect to which a consensus would have to be reached, complicate price and output monitoring and contribute to an environment of differing goals, incentives, costs and profit opportunities among firms. R.A.B. at 40 & 69.

[26] We are concerned in this case with horizontal market power, the ability to raise price above competitive levels. Vertical integration does not affect horizontal market power, which can be exercised in either or both of the vertically related markets. *See, e.g.*, R. Bork, "Vertical Integration and the Sherman Act: The Legal History of an Economic Misconception," 22 U. Chi. L. Rev. 157, 195–98 (1954).

[27] *See* R. Bork, *supra* note 26, at 196 n.128; F. Warren-Boulton, *Vertical Control of Markets* 51–55 (1978).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–6764; 34–25558; 35–24616; 39–2156; IC–16353; IA–1111; File No. S7–32–87]

Expedited Publication of Interpretative, No-Action and Certain Exemption Letters

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of amendments to its regulations on Information and Requests to provide for publication of interpretative, no-action, and certain exemption letters, except for correspondence related to certain trading practices rules, as soon as practicable after such letters are sent or given to requesting parties unless temporary confidential treatment is granted.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Hyatte, (202) 272–2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting revisions to rule 81 under its regulations on Information and Requests.[1]

I. Executive Summary

On September 8, 1987, the Commission proposed for public comment amendments to rule 81 to provide for expedited publication of interpretative, no-action and certain exemption letters.[2] The proposal called for immediate publication of such letters except in cases where confidential treatment had been granted or when the request related to trading practices rules[3] under the Securities Exchange Act of 1934 (Exchange Act).[4] After consideration of comments received from the public, [5] the Commission has determined to adopt the final rule as proposed.

Two commentators suggested to the Commission that the rule should make no exception for trading practices correspondence.[6] In response to these comments, the Commission is today issuing a companion release[7] proposing a further amendment to the rule that would provide for prompt publication of trading practices correspondence and thus treat all correspondence subject to rule 81 under uniform procedures.

[1] 17 CFR 200.81.

[2] Release No. 33–6740 (September 8, 1987) [52 FR 35115].

[3] 17 CFR 240.10b–6, 240.10b–7, 240.10b–8, 240.10b–13, and 240.13e–4. The amendments continue the practice of withholding publication of such requests and the staff's responses for 30 days. All these rules permit the Commission to grant exemptions from their terms without notice and opportunity for hearing.

[4] 15 U.S.C. 78a *et seq.*

[5] Five comment letters were received by the Commission. The letters of comment are available for public inspection at the Commission's Public Reference Room in File No. S7–32–87.

[6] Comment letter from Andrew M. Klein, *et al.*, American Bar Association, Section of Corporation, Business and Banking Law, January 4, 1988; comment letter from Joseph D. Hansen, New York State Bar Association, Banking, Corporation and Business Law Section, November 6, 1987.

[7] Release No. 33–6765 (Companion Release).

II. Discussion of Amendments

Since January 1, 1970, the effective date of rule 81, interpretative and no-action correspondence, reflecting the informal advice of the Commission's staff, has been made available to the public 30 days after the date of the staff's response, except in cases where confidential treatment for up to an additional 90 days has been granted. Recognizing the extent of public interest in this correspondence and the value of more timely publication of the staff's views, the Commission proposed in Release No. 33-6740 to make interpretative, no-action, and certain exemption [8] letters generally available as soon as practicable after the staff's response is sent or given to the requesting party, unless confidential treatment has been afforded. Because of concerns that correspondence under the trading practices rules might more typically involve matters sensitive to premature public disclosure, the Commission proposed that such correspondence would continue to receive delayed publication. The rule as adopted contains such an exception. However, as indicated in the Companion Release, the Commission is reconsidering the exception for trading practices correspondence.

Four of the five comment letters received expressed or implied general support for amendment of the rule to expedite publication of interpretative, no-action, and exemption correspondence.[9] A majority of the commentators shared the Commission's view that the public benefits of prompt publication under rule 81 are significant. As indicated in the proposing release, members of the public interested in federal securities laws rely substantially on this correspondence and in many instances the staff's no-action positions and interpretative views are the most comprehensive secondary source on the application of these laws.[10] Prompt publication as a general rule also avoids the undesirable impression of giving a "requesting party secret guidance from the Government on how to conduct its affairs," [11] where delayed publication may work to the prejudice of other members of the public without prompt access to the staff's views. The comments supporting more timely publication were not unanimous on the question of automatic exceptions to prompt publication for the trading practices rules, a subject discussed in detail in the Companion Release.

For cases where prompt publication of correspondence would adversely affect the business plans of a requesting party, temporary confidential treatment remains available under rule 81(b).[12] The amended rule does not change the procedures, standards or maximum duration of such treatment. No commentator suggested any inadequacy in the terms of rule 81(b). With temporary confidential treatment available under rule 81(b), premature disclosure of business plans may be prevented in an appropriate case, if the party so requests and the Commission's staff concurs.[13] At the same time, the public interest served by the availability of the staff's positions will be met in ordinary cases in which no substantial prejudice to legitimate business purposes arises through public disclosure. This rule's new general standard for prompt disclosure of this correspondence will ease administration of the rule by the Commission's staff, and, because public availability dates will normally be identical to the date of the staff's response, research and citation of this correspondence should be simplified.[14]

III. Cost/Benefit Analysis

The amendments neither impose additional reporting or record-keeping requirements nor significantly increase regulatory compliance costs. The principal benefit associated with the amendments is that they will allow more timely public inspection of requests for interpretative and no-action advice and certain exemption letters and the staff's responses. Expedited publication will assist the public's understanding of significant questions under the federal securities laws.

IV. Statutory Basis

The amended rule is being adopted under section 19 of the Securities Act of 1933; section 23 of the Securities Exchange Act of 1934; section 20 of the Public Utility Holding Company Act of 1935; section 319 of the Trust Indenture Act of 1939; section 38 of the Investment Company Act of 1940; section 211 of the Investment Advisers Act of 1940; and section 1 of the Freedom of Information Act.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information Privacy, Securities.

V. Text of Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

1. The authority citation for Part 200, Subpart D, continues to read as follows:

Authority: 80 Stat. 383, as amended, 31 Stat. 54, secs. 19, 23, 48, Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

2. 17 CFR 200.81 is amended by revising the section heading and paragraph (a); by removing the words "90 days after the expiration of such 30 days" and replacing them with the words "120 days from the date the response has been sent or given to such

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[8] The rule as amended codifies the staff's practice of applying rule 81 procedures to exemption letters issued in situations where notice and opportunity for hearing are not required. *See* Release No. 33-6740, 52 FR at 35116.

[9] The Investment Company Institute (ICI) opposed amendment of the rule for administrative reasons. Comment letter from Mary K. Bellamy, Investment Company Institute, October 27, 1987. The reasons cited by the ICI for its opposition include concerns regarding inadvertent, premature release by the Commission staff of correspondence for which confidential treatment was granted and the possibility that under the proposed procedures notice to competitors of the staff's position might be given before the requesting party's actual receipt of the staff's response. These concerns can be addressed through internal staff procedures designed to eliminate inadvertent, premature disclosure of correspondence for which confidential treatment is granted and by the current staff practice of permitting the requesting party to obtain the staff's letter by messenger.

[10] 52 FR at 35115.

[11] Comment letter from Thomas R. Donovan, Chicago Board of Trade, October 6, 1987.

[12] The temporary confidential treatment afforded by rule 81(b), both in its present and amended forms, is not absolute. In the event of a request under the Freedom of Information Act, 5 U.S.C. 552 *et seq.* (FOIA), correspondence with the staff, the staff's response or both would be disclosable to the FOIA requestor at any time prior to publication, except where there is an applicable exemption under the standards of section 552(b) of FOIA.

[13] If the staff intends to deny confidential treatment, the procedure described in rule 81(b) is followed. In such cases, the staff will inform the requesting party of its intent to deny confidential treatment, a determination made without reference to the merits of the substantive request, and allow 30 days for the requesting party to withdraw the letter. This procedure is followed because the request for the staff's advice is voluntary and should not involve the risk of compelled disclosure of the requesting party's business plans without its consent.

[14] Persons submitting correspondence subject to rule 81 are reminded of the procedural requirements set forth in the Note following paragraph (b) of the rule. Matters concerning the appropriate format and number of copies are discussed in Releases No. 33-6253, 45 FR 72844 (October 28, 1980), and 33-6269 (December 23, 1980), both regarding procedures employed by the Divisions of Corporation Finance and Market Regulation. The parallel procedures of the Division of Investment Management are described in Release No. IC-6330, 36 FR 2600 (January 25, 1971).

person" in the first sentence of paragraph (b); by revising the first sentence of the Note to paragraph (b); and adding a sentence to the end of paragraph (c); as follows:

§ 200.81 Publication of interpretative, no-action and certain exemption letters and other written communications.

(a) Except as provided in paragraphs (b) and (c) of this section, every letter or other written communication requesting the staff of the Commission to provide interpretative legal advice with respect to any statute administered by the Commission or any rule or regulation adopted thereunder, or requesting a statement that, on the basis of the facts stated in such letter or other communication, the staff would not recommend that the Commission take any enforcement action, or requesting an exemption, on the basis of the facts stated in such letter, from the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or any rule or regulation thereunder, where the issuance of an order granting such exemption does not require public notice and an opportunity for hearing, together with any written response thereto, shall be made available for inspection and copying by any person. Letters or other written communications with respect to rules 10b–6, 10b–7, 10b–8, 10b–13 and 13e–4 [§§ 240.10b–6, 240.10b–7, 240.10b–8, 240.10b–13 and 240.13e–4 of this chapter] under the Exchange Act, together with any response thereto, shall be made available for inspection and copying by any person 30 days after the response has been sent or given to the person requesting it. All other letters or written communications, together with the response thereto, shall be made available for inspection and copying by any person as soon as practicable after the response has been sent or given to the person requesting it.

(b) * * *

Note.—All letters or other written communications requesting interpretative advice, a no-action position, or an exemption shall indicate prominently, in a separate caption at the beginning of the request, each section of the Act and each rule to which the request relates. * * *

(c) * * * Further, this section shall not apply to applications or other written communications filed pursuant to § 240.24b–2 that relate to objections to public disclosure of information filed with the Commission or any exchange.

By the Commission.

Jonathan G. Katz,

Secretary.

April 7, 1988.

[FR Doc. 88–8241 Filed 4–13–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 88N–0048]

Antibiotic Drugs; Ertythromycin Topical Gel

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of erythromycin, erythromycin topical gel. The manufacturer has supplied sufficent data and information to establish its safety and efficacy.

DATES: Effective April 14, 1988; comments, notice of participation, and request for hearing by May 16, 1988; data, information, and analyses to justify a hearing by June 13, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of erythromycin, erythromycin topical gel. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR Part 452 by adding a new § 452.510e to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective April 14, 1988. However, interested persons may, on or before May 16, 1988, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the hearing of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before May 16, 1988, a written notice of participation and request for hearing, and (2) on or before June 13, 1988, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the fact of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this

order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 452 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Part 452 is amended by adding new § 452.510e to read as follows:

§ 452.510e Erythromycin topical gel.

(a) *Requirements for certification*—(1) *Standards of identify, strength, quality, and purity.* Erythromycin topical gel is erythromycin in a suitable and harmless gel. Each gram contains 20 milligrams of erythromycin. The erythromycin content is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of erythromycin that it is represented to contain. The erythromycin used conforms to the standards prescribed by § 452.10(a)(1), except with respect to heavy metals.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification: samples.* In addition to complying with the requirements of § 431.1 of this chapter, each request shall contain:

(i) Results of tests and assays on:

(A) The erythromycin used in making the batch for potency, moisture, pH, residue on ignition, identity, and crystallinity.

(B) The batch for erythromycin content.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The erythromycin used in making the batch: 5 packages, each containing approximately 100 milligrams.

(B) The batch: A minimum of 8 containers.

(b) *Tests and methods of assay; erythromycin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place approximately 1 gram, accurately weighed, of the product into a high-speed glass blender jar containing 200 milliliters of 0.5 percent (volume by volume) polysorbate 80 in 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Further dilute an aliquot of the stock solution with solution 3 of the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

Dated: April 6, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-8151 Filed 4-13-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 48

Self-Contained Self-Rescue Devices; Correction

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: This notice corrects a typographical error in a final rule amending Part 48 Training and Retraining of Underground Miners, which appeared in the **Federal Register** on March 30, 1988, 53 FR 10332.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

The following correction is made to 30 CFR 48.6(b)(8) which appeared in the **Federal Register** on March 30, 1988 (53 CFR 10332).

§ 48.6 [Amended]

On page 10335 at the bottom of the third column, the first sentence which reads, "The course shall include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices and at the mine," is revised to read as follows:

"The course shall include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices used at the mine."

* * * * *

Dated: April 6, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-8127 Filed 4-13-88; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-87-31]

Regatta; Barnegat Bay Classic, Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Special Local Regulations 33 CFR 100.502 for the Barnegat Bay Classic powerboat race are being amended. The location of the regulated area and effective period of the regulations are being changed along with change in the events name. This event, sponsored by the Barnegat Bay Power Boat Association, involves competition between high speed powerboats on Barnegat Bay adjacent to the Intracoastal Waterway. The purpose of this regulation is to provide for the safety of participants, spectators and passers-by on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804-398-6204).

SUPPLEMENTARY INFORMATION: On April 2, 1987, the Commander, Third Coast Guard District published a notice of proposed rulemaking in the **Federal Register** for these regulations (Vol. 52, No. 63 FR 10593-10594).

Interested persons were requested to submit comments and one comment was received. These regulations are being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Mr. Lucas A. Dlhopolsky, project officer, Chief, Boating Affairs Branch, Boating

Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Since the publication of the notice of proposed rulemaking the Coast Guard has gone through an organization realignment. The Commander, Fifth Coast Guard District assumed responsibility for the waters of Barnegat Bay south of Toms River, New Jersey on April 30, 1987. On July 6, 1987, a rule was published that redesignated § 100.302 of title 33 Code of Federal Regulations as § 100.502 and amended paragraph (b) of that section to delete the reference to the Third Coast Guard District's Local Notice to Mariners. One comment was received in response to the Notice of Proposed Rulemaking. The commenter wrote to commend the sponsors of the Barnegat Bay Classic for cooperating with the commenter's yacht club by moving the powerboat race course location further south on Barnegat Bay. In so doing a conflict with an already scheduled annual sailboat regatta was avoided.

Economic Assessment and Certification

These regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1987). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible. Since the impact of thse regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED.]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by revising the section heading and paragraphs (a) and (b) of § 100.502 to read as follows:

§100.502 Barnegat Bay Classic, Toms River, New Jersey.

(a) *Regulated Area.* Barnegat Bay, New Jersey in the areas bounded by latitude 39°54'00" North on the north, latitude 36°49'00" North on the south, the Intracoastal Waterway (ICW) on the west and Island Beach on the east.

(b) *Effective Dates.* These regulations will be effective annually on the fourth Saturday in August unless otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** Notice. In case of postponement due to weather, the approved rain date is the following day and these regulations are effective for the same time period.

* * * * *

Dated: July 26, 1987.

A. D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-8197 Filed 4-13-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8-87-14]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the St. Mary Parish Council and the Louisiana Department of Transportation and Development, the Coast Guard is changing the regulation governing the operation of the swing span bridge on State Route 319 over the Gulf Intracoastal Waterway, mile 134.0 near Cypremort, St. Mary Parish, Louisiana, by permitting the draw to remain closed to navigation from 6:55 to 7:10 a.m. and 3:50 to 4:05 p.m. Monday through Friday, except holidays, from 15 August to June 5. This change is being made to allow school buses to pass without delays because of bridge openings. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, Telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 24 December 24, 1987, the Coast Guard published a proposed rule (52 FR 48717) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 6 January 1988. In each notice interested parties were given until 8 February 1988 to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Five letters of comment were received about the proposed rule change. The National Marine Fisheries Service offered no objection. Three letters received from residents whose small children ride the school buses expressed appreciation and verified the need for the proposed rule. One letter writer objected to the proposal as creating an unsafe condition when a tow pushing an empty barge must stand by for the bridge to open. The Coast Guard has carefully considered the comments. A review of the bridge logs indicates that the bridge opens about once every two days on average during both the proposed 15-minute morning closure period and the proposed 15-minute afternoon closure period. Due to the very short periods that the bridge will be closed to navigation, mariners should be able to adjust their speed when approaching the bridge to avoid the 15-minute closure periods and any hazards that may occur due to full stoppage of their vessels. Therefore, the final rule is unchanged from the proposed rule as published in (52 FR 48717) on 24 December 1987.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the closure periods are so abbreviated that they are not considered to be significant. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.451 is revised by redesignating existing paragraph (d) as paragraph (e), and by adding a new paragraph (d) to read as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(d) The draw of the SR319 (Louisa) bridge across the Gulf Intracoastal Waterway, mile 134.0 near Cypremort, shall open on signal; except that from 15 August to 5 June, the draw need not be opened from 6:55 to 7:10 a.m. and from 3:50 to 4:05 p.m. Monday through Friday except holidays.

* * * * *

Date: March 25, 1988.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 88–8198 Filed 4–13–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD5–88–16]

Notice of Temporary Deviation From Drawbridge Operation Regulations for Bridge Across Atlantic Intracoastal Waterway at Camp Lejeune, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has granted a temporary deviation from the regulations for the drawbridge across the Atlantic Intracoastal Waterway at mile 240.7 at Camp Lejeune, North Carolina. The purpose of this deviation from the regulations is to allow the project contractor for the United States Marine Corps, the owner of the bridge, to repair the bridge. The mechanical repairs are expected to be completed by April 22, 1988.

EFFECTIVE DATE: This temporary deviation from the regulations becomes effective on April 11, 1988, and terminates on April 22, 1988, or earlier if bridge repairs are completed ahead of schedule.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portmouth, Virginia 23704–5004 or telephone number (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Merlin R. Roman, project officer, and CDR. Robert J. Reining, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Deviation From Drawbridge Regulations

In consideration of the foregoing, the regulations in § 117.5 of Title 33, Code of Federal Regulations, do not apply to the bridge across the Atlantic Intracoastal Waterway, mile 240.7, at Camp Lejeune, North Carolina, from April 11, 1988, until April 22, 1988, or earlier if bridge repairs are completed ahead of schedule. The bridge may remain closed to vessel traffic from 8:00 a.m. to 5:00 p.m., Monday thru Friday, except that, the bridge shall open from 12:00 noon to 1:00 p.m. for the passage of vessel traffic. At all other times, the bridge shall open on signal.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05 1(g), 117.35(d)

Dated: April 1, 1988.

Alan D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88–8201 Filed 4–13–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD COTP Baltimore, MD Regulation 88–02]

Regulated Navigation Area Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination of Ice Navigation Season under 33 CFR 165.503.

SUMMARY: The Ice Navigation Season Regulated Navigation Area on the northern portion of Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal, is terminated effective 31 March 1988. The regulation for this Regulated Navigation Area, found in 33 CFR 165.503, state that the Regulated Navigation Area is placed in effect and terminated at the direction of the Captain of the Port, Baltimore, Maryland by notice in the **Federal Register**. The Regulated Navigation Area was placed in effect by a **Federal Register** notice on January 11, 1988 (53 FR 616). The purpose of this Regulated Navigation Area was to enhance the safety of navigation in the affected waters. It required operators of certain vessels to be aware, during their vessel's transit of the Regulated Navigation Area, of currently effective Ice Navigation Season Captain of the Port Orders issued by the Captain of the Port, Baltimore, Maryland. The Regulated Navigation Area is hereby terminated.

EFFECTIVE DATE: *Termination:* March 31, 1988.

FOR FURTHER INFORMATION CONTACT: CWO2 D. L. Hutchinson, USCG, Port Safety Officer, MSO Baltimore, Maryland at (301) 962–5105.

Dated: April 11, 1988.

J.H. Parent,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 88–8199 Filed 4–13–88; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3359–9]

Approval and Promulgation of State Implementation Plans; Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a new state regulation as a revision to the Air Pollution Control State Implementation Plan (SIP) of the state of Missouri. The purpose of this regulation is to control leaks of volatile organic compounds (VOC) from equipment used to manufacture polymers and synthetic organic chemicals in the St. Louis ozone nonattainment area. EPA's approval would make the regulation's requirements federally enforceable.

EFFECTIVE DATE: This action will be effective June 13, 1988, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Comments should be sent to the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the state's submission is available for review at the above address and at the Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC; and the Missouri

Department of Natural Resources, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236–2893 or FTS 757–2893.

SUPPLEMENTARY INFORMATION: On November 19, 1986, the State of Missouri submitted rule 10 CSR 10–5.420, Control of Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Plants, to be approved as a revision to the St. Louis ozone SIP. The rule was adopted by the Missouri Air Conservation Commission after proper notice and public hearing, and became effective on September 26, 1986. Two facilities in the St. Louis area are affected by this regulation which establishes inspection and monitoring requirements for pump, valve, and pipe leaks.

The state adopted this regulation in compliance with section 172(b)(2) of the Clean Air Act, which requires SIPs to provide for the implementation of all reasonably available control measures as expeditiously as practicable. For numerous categories of stationary VOC sources, reasonably available control technology (RACT) is prescribed by EPA policy as a presumptive norm developed by EPA and published in a Control Techniques Guideline (CTG) Document. The applicable CTG in this instance is "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment", published by EPA in March 1984 (EPA–450/3–83–006).

EPA's review of the regulation finds that it meets the control requirements of the CTG and is therefore approvable as part of the SIP. EPA's Technical Support Document provides a detailed review of the regulation and is available for public inspection at the locations listed in the **ADDRESSES** section of this notice.

EPA Action

In today's notice, EPA takes final action to approve rule 10 CSR 10–5.420 as a revision to the Missouri SIP. The Administrator's decision to approve this submission is based on a determination that the revision meets the requirements of sections 110 and 172 of the Clean Air Act and of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

EPA believes this action is noncontroversial and is approving it without prior proposal. The public is advised that this action is effective 60 days after publication unless we receive written notice within 30 days from today that someone wishes to submit adverse or critical comments. In such cases, this action will be withdrawn and rulemaking will commence again by announcing a proposal of this action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

Incorporation by reference of the State Implementation Plan for the state of Missouri was approved by the Director of the Office of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbons, Reporting and recordkeeping requirements, Intergovernmental relations, Incorporation by reference.

Date: March 28, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart AA—Missouri

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1320 is amended by adding a new paragraph (c)(62) as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(62) A new rule, Control of Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Plants, was submitted by the Department of Natural Resources on November 19, 1986.

(i) Incorporation by reference. 10 CSR 10–5.420, Control of Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Plants, effective on September 26, 1986.

[FR Doc. 88–7167 Filed 4–13–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP-300175A; FRL-3365-8]

Paper Fiber; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts paper fiber from the requirement of a tolerance when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only. This regulation was requested by Jellinek, Schwartz, Connolly, and Freshman, Inc., on behalf of Edward Lowe Industries, Inc.

EFFECTIVE DATE: Effective on April 14, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Rosalind Gross, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of January 27, 1988 (53 FR 2238), which announced that Jellinek, Schwartz, Connolly, and Freshman, Inc., 1350 New York Ave., NW., Suite 400, Washington, DC 20005, on behalf of Edward Lowe Industries, Inc., had requested that 40 CFR 180.1001(d) be amended by establishing an exemption from the requirement of a tolerance for paper fiber when used as a carrier in pesticide formulations applied to growing crops only.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellents in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support this regulation.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the amendment to 40 CFR Part 180 will protect the public health. Therefore, the regulation is being established as set forth below.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the grounds for the objections. A hearing will be granted if the provisions of the regulation deemed objectionable and the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 6, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Paper fiber, produced by the kraft (sulfate) or sulfite pulping processes.	.....	Carrier.
* * * * *		

* * * * *

[FR Doc. 88-8182 Filed 4-13-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6671

[AK-932-08-4220-10; AA-6994]

Partial Revocation of Public Land Order No. 829 for Selection of Lands by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order (PLO) insofar as it affects approximately 150 acres of National Forest System land withdrawn for the Ward Cove Water Supply System. This action also opens the land for selection by the State of Alaska, if such land is otherwise available. The land has been and will remain open to the mineral leasing laws. The land will not be opened to location and entry under the United States mining laws and the nonmineral public land laws, except the Alaska Statehood Act, until a further opening order is published.

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 829 which withdrew land in the Tongass National Forest for the Ward Cover Water Supply System is hereby revoked insofar as it affects the land withdrawn for the Ward Cove Water Supply System as published in the **Federal Register**, 17 FR 4710, May 23, 1952, excluding those portions lying within PLO No. 3795 and Patent No. 1180771 (U.S. Survey No. 3400). The Ward Cove Water Supply System is described as:

Copper River Meridian (Partially Surveyed)

T. 74 S., R. 90 E.

All national forest land 400 feet in width adjacent to and on the north and west side of a proposed pipeline, beginning at the national forest boundary from which corner No. 9 of U.S. Survey No. 1761 bears N. 55°43' W., approximately 360 feet; thence:

N. 10°30' E., 1,100 feet;
S. 84°00' E., 1,300 feet;
N. 58°30' E., 2,200 feet;
N. 16°00' E., 1,500 feet;
N. 84°30' E., 1,850 feet;
N. 27°30' E., 500 feet;
N. 33°00' E., 1,100 feet;
N. 9°00' E., 1,050 feet;
N. 34°30' E., 1,000 feet;

and including all national forest land adjacent to and on the south and east sides of above said proposed pipeline and situated between the said pipeline and one-fourth mile west of Ward Creek and Ward Lake, as shown on the map titled "Map of Lake Connell, Lake Ingraham, and Ward Creek, Showing Proposed Reservoirs, Dams, and Pipe Line, Ketchikan Pulp and Paper Company," by William D. Shannon and Associates, dated August 27, 1951, on file in the Bureau of Land Management, Washington, DC 20240.

The area described aggregate approximately 150 acres.

2. Subject to valid existing rights, the land described above is hereby opened for selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21.

3. As provided by section 5(g) of the Alaska Statehood Act, supra, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest and any other withdrawals of record.

4. The land described in paragraph 1 shall remain closed to location and entry under the United States mining laws and the nonmineral public land laws, except the Alaska Statehood Act, supra, until a further opening order is published.

J. Steven Griles,

Assistant Secretary of the Interior.

April 1, 1988.

[FR Doc. 88-8111 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6672

[AK-932-07-4220-10; AA-6040]

Revocation of Powersite Classification No. 188 for Selection of Land by the State of Alaska, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety a powersite classification which withdrew approximately 383 acres of National Forest System land for power purposes at Baranof Warm Springs Bay. This action also opens the land for selection by the State of Alaska, if the land is otherwise available. The land has been and will remain open to the mining and mineral leasing laws. The land will not be opened to the nonmineral public land laws, except the Alaska Statehood Act, until a further opening order is published.

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM, Alaska State Office, 701 C Street, P.O. Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Powersite Classification No. 188 of September 13, 1927, which withdrew National Forest System land for power purposes is hereby revoke in its entirety:

Copper River Meridan

Tongass National Forest

Located within Sections 13 and 24, T. 55 S., R. 66 E., and Sections 18 and 19, T. 55., R. 67 E., more specifically described as:

All lands lying within one-fourth of a mile of either side of an unnamed creek from its mouth to a point one mile upstream, excluding U.S. Survey Nos. 3874 and 3291A. The mouth of the said unnamed creek flows southerly through U.S. Survey No. 3874 into Warm Springs Bay.

The area described contains approximately 383 acres.

2. Subject to valid existing rights, the land described above is hereby opened for selection by the State of Alaska under the provisions of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, *et seq.;* 48 U.S.C. prec. 21, if such land is otherwise available.

3. As provided by section 6(g) of the Alaska Statehood Act, supra, the State of Alaska is provided a preference right of selection for the land described above for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest and any other withdrawals of records.

4. The land described in paragaph 1 shall remain closed to the nonmineral public land laws, except the Alaska Statehood Act, supra, until a further opening order is published.

J. Steven Griles,

Assistant Secretary of the Interior.

April 1, 1988.

[FR Doc. 88-8144 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6673

[AK-932-08-4220-10; A-060246]

Partial Revocation of Public Land Order Nos. 3953 and 4056 for Selection of the Lands by the State of Alaska, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes two public land orders (PLO's) insofar as they affect approximately 22,865 acres of public land withdrawn for the Corps of Engineers for the Bradley Lake Hydroelectric Project. This action also classifies the lands as suitable for selection by the State of Alaska, if such lands are otherwise available. If the lands are not selected by the State, the lands will continue to be subject to the terms and conditions of PLO No. 5179, as amended.

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order Nos. 3953 and 4056, which withdrew public lands for the Bradley Lake Hydroelectric Project are hereby revoked insofar as they affect the following described land:

Seward Meridian

T. 5 S., R. 8 W.,
- Sec. 19, that portion lying outside Powersite Classification No. 436;
- Sec. 20, W½, Those portions lying outside of Powersite Classification No. 436 and Power Project No. 8221;
- Sec. 29, NW¼, that portion lying outside of Power Project No. 8221;
- Sec. 30, that portion lying outside of Powersite Classification No. 436 and Power Project No. 8221;
- Sec. 31, that portion lying outside of Powersite Classification No. 436 and Power Project No. 8221.

T. 6 S., R. 8 W.,
- Sec. 5, SW¼, that portion lying outside of Powersite Classification No. 436;
- Sec. 6, that portion lying outside of Powersite Classification No. 436 and Power Project No. 8221.

T. 4 S., R. 9 W.,
- Sec. 29, those portions lying outside of Powersite Classification No. 436 and Power Project No. 8221;
- Secs. 30 and 31, those portions lying outside of Powersite Classification No. 436, Power Project No. 8221, and lot 1, U.S. Survey No. 2937;
- Sec. 32 and 33, those portions lying outside of Powersite Classification No. 436.

T. 5 S., R. 9 W.,
- Secs. 1 and 2;
- Sec. 3, N½, SW¼, N½SE¼, SW¼SE¼;

Sec. 4;
- Sec. 5, that portion lying outside of Powersite Classification No. 436;
- Secs. 6 to 11, inclusive, those portions lying outside of Powersite Classification No. 436 and Power Project No. 8221;
- Sec. 12;
- Sec. 13, those portions lying outside of Powersite Classification No. 436;
- Secs. 14 to 18, inclusive, those portions lying outside of Powersite Classification No. 436 and Power Project No. 8221;
- Sec. 19, that portion lying outside of Powersite Classification No. 436;
- Secs. 20 and 21;
- Secs. 22 to 26, inclusive, those portions lying outside of Powersite Classification No. 436 and Power Project No. 8221;
- Secs. 27 to 35, inclusive;
- Sec. 36, that portion lying outside of Power Project No. 8221;

T. 4 S., R. 10 W.,
- Sec. 25, that portion lying outside of Powersite Classification No. 436;
- Sec. 36, those portions lying outside of Powersite Classification No. 436 and Power Project No. 8221.

T. 5 S., R. 10 W.,
- Secs. 1 and 2, those portions lying outside of Power Project No. 8221;
- Sec. 3, that portion lying outside of Powersite Classification No. 436 and Power Project No. 8221;
- Secs. 10 and 11, those portions lying outside of Powersite Classification No. 436 and Power Project No. 8221;
- Sec. 12, those portions lying outside of Power Project No. 8221;
- Secs. 13 and 14, those portions lying outside of Powersite Classification No. 436 and Power Project No. 8221;
- Secs. 15 and 24, those portions lying outside of Powersite Classification No. 436.

The areas described aggregate approximately 22,865 acres.

2. Subject to valid existing rights, the lands described above are hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437–2438, 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the lands described above for a period of ninety-one (91) days from the date of publication of this order, if the lands are otherwise available. Any of the lands described herein that are not selected by the State of Alaska will continue to be subject to the terms and conditions of Public Land Order No. 5179, as amended, and any other withdrawals of record.

J. Steven Griles,

Assistant Secretary of the Interior.

April 1, 1988.

[FR Doc. 88–8110 Filed 4–13–88; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF JUSTICE

48 CFR Parts 2804, 2832, and 2852

[Justice Acquisition Circular 88–1]

Amendments to the Justice Acquisition Regulation (JAR) Regarding Ratification of Unauthorized Commitments and Prompt Payment

AGENCY: Justice Management Division, Office of the Procurement Executive, Justice.

ACTION: Final rule.

SUMMARY: Justice Acquisition Circular (JAC) 88–1 amends the JAR to incorporate Federal Acquisition Regulation coverage regarding ratification of unauthorized commitments and the implementation of the policies and procedures necessary to comply with Office of Management and Budget (OMB) Circular A–125, "Prompt Payment".

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: W. L. Vann, Procurement Executive, Office of the Procurement Executive, (202) 272–8354.

SUPPLEMENTARY INFORMATION:

1. Background

JAC 88–1, Item No. 1

The Federal Procurement Regulations contained guidance on the subject of ratification of unauthorized comments. The coverage was omitted from the Federal Acquisition Regulation (FAR), and accordingly, Department-wide policy was provided in JAC 85–1 dated July 22, 1985. The issuance of Federal Acquisition Circular (FAC) 84–83 has now extended FAR coverage into this area. Item No. 1 of the JAC amends the JAR to reflect this coverage.

JAC 88–1, Item No. 2

Because the FAR did not specifically include coverage on OMB Circular A–125, "Prompt Payment", Department-wide procedures for implementing the Prompt Payment Act (Pub. L. 97–177, May 21, 1982, 31 U.S.C. 1801) and OMB Circular A–125 were provided with the issuance of the JAR on January 30, 1985. FAC 84–33 now provides for uniform coverage in the FAR, and accordingly, Item No. 2 of the JAC amends the JAR to reflect the change.

2. Regulatory Flexibility Act

JAC 88–1

The revisions to the JAR are not expected to impact adversely upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, because very few ratification actions are necessary and the guidance provided by the FAR is consistent with the requirements of OMB Circular A–125.

3. Paperwork Reduction Act

JAC 88–1

The information collection regarding electronic funds transfers contained in Alternate II of the clause at FAR 52.232–25 was approved by the Office of Management and Budget pursuant to a request from the Department of the Treasury. OMB Control No. 151–00056 was assigned to this information collection and to Form TFS 3881, Payment Information Form, which is referenced in the clause. The Paperwork Reduction Act does not apply because the rule did not impose any additional requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 2804, 2832, 2852

Government procurement.

Harry H. Flickinger,

Assistant Attorney General for Administration.

1. The authority citation for 48 CFR Part 2804, 2832, and 2852 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

PART 2804—ADMINISTRATIVE MATTERS

2804.7001 [Amended]

2. Section 2804.7001 is amended by removing in paragraphs (a) and (b).

3. Section 2804.7002 is revised to read as follows:

2804.7002 Request for ratification.

The HCA may delegate to subordinate individuals approval of ratification requests of $5,000 and below; however, in no case shall the authority be delegated below the level of chief of the contracting office.

PART 2832—CONTRACT FINANCING

4. In subpart 2832.70 the title is amended by removing the word "Act."

5. Section, 2832.7000 is revised to read as follows:

2832.7000 Scope of subpart.

This subpart provides policies and procedures for implementing FAR 32.9—Prompt Payment.

6. Section 2832.7001 is revised to read as follows:

2832.7001 Policy.

The head of each contracting activity is responsible for promulgating procedures to ensure that, when specifying due dates, full consideration will be given to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract.

2832.7002 [Removed]

7. Section 2832.7002 is removed.

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2852.232-70 through 2852.232-78 [Removed]

8. The following sections are removed.

2852.232-70 Method of Payment.

2852.232-71 Invoice Requirements (FFP).

2852.232-72 Invoice Requirements (CPFF, T&M, and LH).

2852.232-73 Invoice Requirements (purchase orders).

2852.232-74 Payment Due Date (F.O.B. destination).

2852.232-75 Payment Due Date (F.O.B. origin).

2852.232-76 Payment Due Date (based on delivery).

2852.232-77 Interest on Overdue Payments (contracts).

2852.232-78 Interest on Overdue Payments (purchase orders).

[FR Doc. 88-8114 Filed 4-13-88; 8:45 am]

BILLING CODE 4410-01-M

Proposed Rules

Federal Register
Vol. 53, No. 72
Thursday, April 14, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

Irish Potatoes Grown in Washington; Proposed Amendment No. 8 to Continuing Handling Regulation To Relax the Minimum Size Requirement for Round Red Potatoes and Reduce the Minimum Quantity Exemption

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reduce the minimum size requirement for high quality, round red potatoes from 1½ inches to 1 inch in diameter and lower the minimum quantity exemption from 20 hundredweight to 5 hundredweight per day. The reduced size requirement would also apply to imported round red potatoes during the months of July and August. The intent of these actions is to meet current demand for smaller, high quality round red potatoes and to decrease the volume of uninspected, low quality potatoes entering fresh market channels.

DATE: Comments must be received by May 16, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–5610.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 946 (7 CFR Part 946), as amended, regulating the handling of Irish potatoes grown in the State of Washington. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington State potatoes subject to regulation under the marketing order, and approximately 360 producers in the production area. There are about 25 potato importers subject to the requirements of the potato import regulation. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Washington State potatoes and importers of potatoes may be classified as small entities.

Fresh shipments of Washington round red potatoes have risen from 96,900 hundredweight (cwt.) in 1981–82 to 235,000 cwt. in the 1986–87 season. This increase has been continuous except for a drop in 1985–86. As of January 31, 1988, total fresh shipments of Washington potatoes are down from the previous season; however, fresh round red shipments are up to 285,000 cwt. compared with 216,000 cwt. during a corresponding period last year. Round red potatoes in Washington currently comprise approximately 6 percent of total fresh shipments, and less than 1 percent of total production. Over 97 percent of the round red potato crop is utilized in the fresh market, where consumer preference and demand determine sales. With these potatoes subject to buyer scrutiny, size, shape, and overall quality are of vital importance in meeting the consumer preference.

The handling requirements for fresh Washington potatoes are specified in § 946.336 (46 FR 39116, July 31, 1981; 47 FR 33245, August 2, 1982; 47 FR 38493, September 1, 1982; 48 FR 31851, July 12, 1983; 49 FR 32539, August 15, 1984; 52 FR 15490, April 29, 1987; 52 FR 41946, November 2, 1987). The current requirements for round red potatoes specify that they be shipped under the following conditions. Round red potatoes must grade at least U.S. No. 2 and must have a minimum diameter of 1⅞ inches (47.6 mm) except size "B" (1½ inches minimum diameter) may be shipped if otherwise grading U.S. No. 1. Furthermore, the maturity requirement for round red potatoes is that they shall not be more than "moderately skinned."

This proposed rule would reduce the minimum size requirement for U.S. No. 1 round red potatoes from 1½ inches to 1 inch minimum diameter. This rule also proposes a decrease in the minimum quantity exemption from 20 cwt. to 5 cwt. per day. These changes were recommended by the State of Washington Potato Committee to become effective beginning with the 1988–89 season which commences July 1.

The relaxed size requirement would afford producers and handlers the opportunity to meet current market demand for small, high quality round red potatoes. This change is expected to benefit consumers by providing them with a product they desire, and producers and handlers by increased sales. This relaxation should not adversely affect the market for larger round red potatoes.

Under the current regulation, handlers are able to ship up to 20 cwt. per day without regard to inspection and assessment requirements. The intent of this exemption is to alleviate the burden on handling noncommercial quantities of potatoes and to allow direct marketing of potatoes to operate in more

freedom. The committee believes that the 5 cwt. amount would be adequate to fulfill these objectives. Reducing this minimum quantity exemption to 5 cwt. would address the committee's concern that too many uninspected, low quality potatoes are ending up in fresh market channels. The proposed exemption would be more in line with exempt amounts provided under similar marketing orders covering other major potato producing areas. The purpose of this change would be to lower the amount of low quality potatoes entering fresh market channels.

Other exemptions currently provided would be unchanged. The grade, size, cleanness, maturity, and pack requirements are not applicable to shipments of potatoes for livestock feed, charity, seed, prepeeling, other processing, or export. Shipments to these outlets are also free from inspection requirements.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

In the case of potatoes, the current import regulation [§ 980.1, 34 FR 8043] specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (M.O. 945) during each month of the marketing year and that for round white types, they be based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31, and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year.

The quality standards imposed upon imports of red skinned, round type potatoes are based on that type grown in Washington during the months of July and August. During the remainder of the year, the import requirements are based uon those in effect for potatoes grown in Colorado Area 2.

As proposed, during the July 1 through August 31 period, round red skinned potatoes which are at least one inch in diameter may be imported if they otherwise grade at least U.S. No. 1. No change would be required in the language of § 980.1 or § 946.336(i) *Applicability to imports.*

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons sufficient time to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 946 be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 946.336 is amended by revising paragraphs (a)(2)(i) and (f) to read as follows:

§ 946.336 Handling regulation.

* * * * *

(a) * * *

(2) *Size*—(i) *Round varieties*—1⅞ inches (47.6 mm) minimum diameter, except round red varieties may be 1 inch (25.4 mm) minimum diameter, if U.S. No. 1.

* * * * *

(f) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed 6 hundredweight of potatoes per day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment over 5 hundredweight of potatoes.

* * * * *

Dated: April 11, 1988.

Robert C. Keeney,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–8233 Filed 4–13–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites public comments on a proposal to suspend for the months of April through August 1988 the requirement that a cooperative association deliver 51 percent or more of the producer milk of members of the association to pool distributing plants of other handlers in order to qualify a supply plant operated by the cooperative association for pooling under the Nebraska-Western Iowa order. The action was requested by a cooperative association that represents producers who supply milk for the market. The association claims that this action is necessary to assure that its member dairy farmers who have regularly supplied the market's fluid needs will continue to share in the market's fluid milk sales.

DATE: Comments are due on or before April 21, 1988.

ADDRESS: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building; P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 90090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk pooled and priced under the order and thereby receive the benefits that accrue from such pricing. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of April through August 1988:

In § 1065.7(c), the words "51 percent or more of the".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to:

USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include April 1988 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove for the months of April through August 1988 the requirement that a cooperative association deliver 51 percent or more of the producer milk of members of the association to pool distributing plants of other handlers in order to qualify a supply plant operated by the cooperative association for pooling. The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents a large number of the market's producers.

According to Mid-Am, the amount of producer milk pooled on the Nebraska-Western Iowa order during 1987 increased 5 percent over the amount pooled under the order during 1986. At the same time, the cooperative states, producer milk used in Class I declined by 2 percent. Mid-Am states that these trends have continued into 1988, with levels of producer milk pooled under the order during the months of January and February increasing by 13 and 11 percent, respectively, from the levels of the same months of 1987.

Mid-Am predicts that the present trends in milk production and Class I use, combined with the decrease in Class I sales that will accompany the closing of schools for the summer, will cause the percentage of the cooperative's milk pooled under the Nebraska-Western Iowa order and shipped to distributing plants to fall below 51 percent during the months for which the suspension is requested. As a consequence, Mid-Am expects the current marketing situation to create difficulties for the cooperative in maintaining the pool status of its member producers who historically have supplied the fluid needs of the Nebraska-Western Iowa market.

As alternatives to depooling some milk of its member producers, the cooperative would have to attempt to pool Nebraska-Western Iowa producer milk on another Federal order or ship milk to distributing plants where the milk would be received, loaded back into the truck and shipped to a manufacturing plant. Either alternative would require the cooperative to move milk in an uneconomic and inefficient manner solely to maintin the pool status of producers who historically have supplied the fluid needs of the Nebraska-Western Iowa marketing area.

Accordingly, it may be appropriate to suspend the 51 percent delivery standard for the months of April through August 1988.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

PART 1065—[AMENDED]

The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC on April 11, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88–8235 Filed 4–13–88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–25a]

Porter County Chapter of the Izaak Walton League et al.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is denying a petition for rulemaking submitted by the Porter County Chapter of the Izaak Walton League of America, et al. The petitioner requested a change in the Commission's regulations governing the extension of construction permits.

Specifically the petitioner requested that the Commission not limit its inquiry in granting an extension to those reasons why construction was not timely completed but would require the Commission to consider whether good cause had been shown for continued construction of the reactor in light of all the circumstances at the time the request for an extension was filed. Commission decisions since the filing of the petition have emphasized that the decision to grant an extension should not be used to conduct a broad-based reconsideration of the initial decision to grant a construction permit. Since the petition would, in essence, require such broad-based reconsideration, the Commission has decided to deny the request for the petition.

ADDRESS: Copies of correspondence, the petition, and documents cited below are available for public inspection and copying for a fee at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ronald M. Smith, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–4396.

SUPPLEMENTARY INFORMATION:

The Petition

In a submittal dated December 20, 1979, the Porter County Chapter of the Izaak Walton League, the Concerned Citizens Against Bailly Nuclear Site, the Businessmen for the Public Interest, Inc., James E. Newman, and Mildred Warner filed with the Commission, petition for rulemaking PRM–50–25a. An identical petition was filed on the same date by the State of Illinois and was denominated petition for rulemaking PRM–50–25. The petitioners requested that the Commission modify 10 CFR 50.55(b) which provides:

> If the proposed construction or modification of the facility is not completed by the latest completion date, the permit shall expire and all rights thereunder shall be forfeited: *Provided, however,* That upon good cause shown the Commission will extend the completion date for a reasonable period of time. The Commission will recognize, among other things, developmental problems attributable to the experimental nature of the facility or fire, flood, explosion, strike, sabotage, domestic violence, enemy action, an act of the elements, and other acts beyond the control of the permit holder, as basis for extending the completion date.

The petitioners sought to amend this section as an alternative to their attempt to intervene in the construction permit proceeding for Northern Indiana Public Service Company's (NIPSCO) Bailly Nuclear Generating Station. NIPSCO canceled the plant and petitioner's desire to inervene became moot as a result of cancellation. However, the petitioners requested that the Commission consider modifying § 50.55(b). Specifically, the petitioners

requested that the good cause determination must consider "whether the permittee has shown good cause for the continued construction of the plant in light of all the circumstances at the time of considering the application [for the extension]." In the view of the petitioners, this rule would prohibit the Commission from limiting the extension proceeding to the reasons why construction was not completed by the latest completion date in the construction permit. The Commission received four comments on the petition from law firms representing various owners and operators of nuclear power plants. The comments were unanimous in their opposition to the petition.

In early 1985, both the State of Illinois and the private citizen groups were contacted by the NRC in order to determine whether the petitioners wanted to withdraw their request in light of the cancellation by NIPSCO of the Bailly Generating Station. On February 28, 1985, the State of Illinois sent a letter to the Secretary of the Commission withdrawing its petition for rulemaking (PRM–50–25). Attorneys for the private citizen petitioners were contacted and they agreed to withdraw the petition (PRM–50–25A). Approximately a year later, the attorney for the private citizens was again contacted and he stated that he would withdraw the petition. Follow-up information was sent on January 31, 1986. No response was forthcoming. Rather than delay further, the Commission will act upon the petition.

Discussion

Subsequent to the filing of the petitions, the Commission clarified the meaning of § 50.55(b). In *Washington Public Power Supply System* (WPPSS Nuclear Project Nos. 1 & 2), CLI–82–29, 16 NRC 1221 (1982), the Commission addressed the scope of the "good cause" determination. First, the Commission noted that the purpose of the extension process was not to engage in an unbridled inquiry into matters already addressed in the initial construction permit hearing. *Id.* at 1227. The Commission then noted that a person who wanted to raise health, safety, or environmental issues could do so in a request for the Commission to institute a show-cause proceeding under 10 CFR 2.206 or, to the extent appropriate, would seek to litigate such issues in the context of an operating license proceeding. The Commission concluded that the approach to deciding whether good cause had been shown was to limit the challenges to the request for an extension to those based on the reasons proffered by the permittee for the delay. *Id.* at 1228. Thus, for example, a challenge to a permittee's need for an extension based on delays due to unusually severe weather could not be based on the need for the facility but only on the severity of the weather as it affected permittee's ability to construct the facility. The Commission again addressed the issue of good cause shown in *Texas Utilities Electric Company* (Comanche Peak Steam Electric Station, Unit 1), CLI–86–15, 24 NRC 397. In that case, the Commission held that a permittee may demonstrate that there was good cause for the past delay in plant completion or a permittee may show that its current and future actions are "good cause" for an allowance of more time for plant completion. This is so even when the delay results from past conduct by the permittee which sought to violate NRC requirements, which then resulted in a requirement to correct safety deficiencies flowing from the past conduct.

In short, if the permittee discarded and repudiated its past policy of violating NRC requirements, "any delays arising from the need to take corrective action would be delays for good cause." *Id* at 403.

The Commission revisited the construction permit extension process in *Public Service Company of New Hampshire* (Seabrook Station Unit 2), CLI–84–6, 19 NRC 975 (1984). The Commission reaffirmed and expanded on the *WPPSS* decision. Specifically, the Commission developed a test for determining whether a contention falls within the perimeter of the construction permit extension process. The contention must show that the applicant is responsible for the delay and has acted intentionally and without a valid business purpose. *Id.* at 978.

The Commission reemphasized the narrow scope of the construction permit extension proceeding in *Texas Utilities Electric Company* (Comanche Peak Steam Electric Station, Unit 1), CLI–86–04, 23 NRC 113 (1986). In *Texas Utilities*, the Commission had to determine whether it could grant an extension of a construction permit after the construction permit had expired. The Commission determined that it could do so. More importantly, the Commission rejected a plea by the Citizens Association for Sound Energy (CASE) for a full-scale hearing on a new construction permit. 23 NRC at 117–120. Rather, the Commission referred the request for a hearing to the Atomic Safety and Licensing Board Panel for appropriate action. In the referral, the Commission limited the scope of any hearing to challenges to Texas Utilities [1] effort to demonstrate the existence of good cause. 23 NRC at 121. By rejecting CASE's plea, the Commission reiterated its policy that the construction extension process is not a forum for the reconsideration of issues addressed in the construction permit hearing; nor is it an avenue for raising issues that can be addressed in a more appropriated forum such as a § 2.206 proceeding or an operating license proceeding. The Commission's determination in this case was upheld by the D.C. Circuit Court of Appeals on June 26, 1987. *See Citizen's Association for Sound Energy v. NRC*, 821 F.2d 725 (D.C. Cir. 1987).

In summary, the Commission has repeatedly rejected attempts to broaden the scope of the construction permit extension proceeding. Avenues exist in which persons can raise safety and environmental concerns. The Commission does not believe that a full-scale relitigation in "a good cause proceeding" of issues addressed elsewhere or that can be raised in a different proceeding would substantially improve the protection of public health and safety.

Denial

Based on the above considerations the Commission hereby denies the petition for rulemaking PRM–50–25a dated December 20, 1979, filed by the Porter County Chapter of the Izaak Walton League, et al.

Pursuant to the 10 CFR 1.49(o), the Executive Director for Operations is authorized to deny petitions for rulemaking of a minor or nonpolicy nature where the grounds for denial do not substantially modify existing precendent. This petition does not raise new policy issues and the grounds for denial of the petition are in accordance with existing precedent. In fact, the Commission has recently addressed this very issue and has seen no reason to modify its existing policy. Thus, denial of the petition falls within the scope of the Executive Director's delegated authority.

Dated at Bethesda, Maryland, this 1st day of April 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.

Executive Director for Operations.

[FR Doc. 88–8168 Filed 4–13–88; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-56-AD]

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); reopening of comment period.

SUMMARY: This document amends an earlier proposed airworthiness directive (AD), applicable to certain Model 747 airplanes, that would have required hydrostatic testing of the leading edge pneumatic ducts and repair or replacement, as necessary. This document amends the NPRM by changing the type and applicability of testing and the compliance time. This action is prompted by additional testing which indicates that the original proposed action would not be completely effective in preventing leading edge duct failures.

DATES: Comments must be received no later than May 10, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-56-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-56-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on July 6, 1987 (52 FR 25239), which requested public comment concerning a proposal to require testing of wing leading edge pneumatic ducts, and repair or replacement, as necessary, on Boeing Model 747 series airplanes. The comment period closed August 21, 1987. Comments were received from eight parties.

The Boeing Company requested additional time to complete a test program in which the effects of hydrides on titanium duct durability was being evaluated. The FAA determined that the delay of the Final Rule following the NPRM to allow completion of testing by Boeing was justified to avoid premature issuance of an AD.

During the test program, Boeing has found evidence that the formation of hydrides along heat affected zones in the weld areas of wing leading edge pneumatic ducts contributes to premature duct failure. The study also indicates that stress-relieving the ducts eliminates the residual stresses and local stresses that lead to hydride-caused cracking. The cracks formed by hydrides grow very slowly and are readily detected by penetrant inspection.

Boeing recommends the following program to detect or prevent cracks: For Model 747 airplanes up to line number 574 which have accumulated more than 7,000 landings, within the next 3,000 landings, perform a proof pressure test on the wing leading edge ducts. These airplanes had 160 psia proof pressure tests on the ducts during manufacture; later airplanes had 300 psia proof pressure tests during manufacture and would not require additional pressure testing. For all Model 747 airplanes which have accumulated more than 7,000 landings, within the next 3,000 landings, perform a penetrant inspection of the wing leading edge pneumatic ducts. Repeat the penetrant inspections at intervals not to exceed 7,000 landings. Stress-relieving the ducts has been shown to relieve residual stresses; hence, stress-relieving the ducts has been recommended by Boeing as terminating action for the repetitive inspections.

The FAA has considered the information provided by Boeing and concurs with the recommendations. This proposal constitutes a revision to the original NPRM that is sufficiently different to require amendment of the NPRM and reopening of the comment period.

In addition to the comments from the Boeing Company, several commenters noted that the proposed 6,000 hour initial compliance period would require extensive time out of service for their Model 747 airplanes. In addition, there was concern expressed regarding availability of spare duct sections to replace those that failed during the proposed pressure tests. The amended NPRM, in allowing a longer compliance period, addresses those concerns.

Other commenters suggested accomplishing penetrant tests, leak tests, and visual inspections in lieu of proof pressure tests. The FAA does not concur with these commenters for the airplanes up to line number 574. Problems with weld quality, which prompted the original NPRM, have not been identified prior to duct burst in some cases using the techniques proposed by the commenters. The amended NPRM does, however, require penetrant inspection on airplanes after line number 574.

Two commenters expressed the opinion that the AD was unnecessary, provided existing maintenance procedures are followed. Further, one commenter stated that the unsafe condition addressed in the NPRM was not an inflight safety problem. The FAA does not concur with these comments. Existing maintenance practices have not eliminated the problem. The cases cited in the original NPRM indicate that a burst leading edge duct can lead to substantial damage to the airplane and misleading information to the pilot, either of which reduce the ability of the

flight crew to properly continue safe flight and landing.

One commenter suggested adding other pneumatic ducts to the AD, noting that problems had been experienced in other parts of the duct system. While the FAA concurs that other ducts have burst in service, these failures have not presented the hazard that the failure of the leading edge ducts has shown. The same commenter requested clarification of the X-ray procedure in the service letter called out in the original NPRM. This procedure was not proposed to be required by the NPRM and is not addressed in this supplemental NPRM; therefore, no change is needed.

One commenter stated that paragraph B. of the original NPRM should be dropped in its entirety. The commenter noted that newly-purchased ducts that meet Boeing specifications should not have to be verified. This commenter stated that if a used but serviceable duct was installed on the airplane when replacing a failed duct, inspection and test of the replacement part is accomplished as part of the operator's maintenance program. The FAA agrees with this comment and the original paragraph B. has been deleted from the supplemental NPRM.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–36A2074, dated February 11, 1988, which describes hydrostatic testing and penetrant inspection of Boeing 747 wing leading edge pneumatic ducts.

After a careful review of the available data, including the comments noted above, an AD is proposed which would require inspections of the wing leading edge pneumatic system ducts on Boeing Model 747 series airplanes in accordance with the aforementioned Boeing Service Bulletin.

It is estimated that 172 airplanes of U.S. registry would be affected by this AD, that it would take approximately 120 manhours per airplane to accomplish the required initial inspection and test, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators for the initial required action is $825,600. In addition, the required repetitive inspections would take 104 manhours per airplane every 7,000 flight cycles, which is approximately 28,000 flight hours or 9.33 years. The average cost associated with the repetitive inspections is approximately $76,690 per year.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising notice of proposed rulemaking, Docket No. 87–NM–56–AD, published in the **Federal Register** on July 6, 1987 (52 FR 25239), to read as follows:

Boeing: Applies to Model 747 series airplanes, certificated in any category, Group 1 and Group 2 airplanes as listed in Boeing Service Bulletin 747–36A2074, dated February 11, 1988. Compliance required as indicated, unless previously accomplished.

To prevent damage to wing panels and electrical wiring as a result of failure of wing leading edge ducts, accomplish the following:

A. For Group 1 airplanes: prior to the accumulation of 7,000 flight cycles, or within the next 3,000 flight cycles, whichever occurs later, after the effective date of this AD, accomplish a proof pressure test and penetrant inspection of the wing leading edge pneumatic ducts in accordance with the Boeing Alert Service Bulletin 747–36A2074, dated February 11, 1988, or later FAA-approved revision.

B. For Group 2 airplanes: prior to the accumulation of 7,000 flight cycles, or within the next 3,000 flight cycles, whichever occurs later, after the effective date of this AD, accomplish a penetrant inspection of the wing leading edge pneumatic ducts in accordance with the Boeing Alert Service Bulletin 747–36A2074, dated February 11, 1988, or later FAA-approved revision.

C. For both Group 1 and Group 2 airplanes, repeat the penetrant inspection required by paragraphs A. and B., above, at intervals not to exceed 7,000 flight cycles.

D. Accomplishing the leading edge duct weld stress relieving procedure in accordance with Boeing Alert Service Bulletin 747–36A2074, dated February 11, 1988, or later FAA-approved revision, constitutes terminating action for the repetitive penetrant inspections required by paragraph C., above.

E. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. For the purpose of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of flight cycles may be determined by dividing each airplane's number of hours time-in-service by the operator's fleet average time from takeoff to landing for the airplane type.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for accomplishment of the rework required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 6, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–8213 Filed 4–13–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary

17 CFR Ch. IV

Implementing Regulations for the Government Securities Act of 1986

AGENCY: Office of the Assistant Secretary (Domestic Finance), Treasury.

ACTION: Notice of extension of time for submission of comments.

SUMMARY: This document extends until April 27, 1988, the deadline for the submission of comments on the proposed clarifying amendments to the Treasury's regulations issued under the Government Securities Act of 1986. The notice of proposed rulemaking was published in the **Federal Register** on March 15, 1988 (53 FR 8598) and

comments were to be received on or before April 14, 1988.

DATE: Comments must be submitted on or before April 27, 1988.

ADDRESSES: Comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, Room 209, 999 E Street NW., Washington, DC 20239–0001. Comments received will be avialable for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Anne Meister (Government Security Specialist), Don Hammond (Government Securities Specialist), or Clifford Rones (Attorney-Advisor) at 202–376–4632.

SUPPLEMENTARY INFORMATION: The amendments are being proposed to resolve some technical problems and omissions in the rule, to make conforming changes, and to clarify the Department's intent with respect to certain provisions that have raised questions in the implementing regulations for the Government Securities Act of 1986 (52 FR 27910) issued on July 24, 1987.

The Department has received a request for an extension of the comment period until April 27, 1988, from an association representing approximately 180 banks. The association stated that the original thirty-day comment period does not allow sufficient time for the association and a number of its members to prepare their comments on the proposed amendments to the regulations. Given the limited additional time requested, the Department agrees to extend the comment period until April 27, 1988.

Date: April 11, 1988.

Charles O. Sethness,

Assistant Secretary for Domestic Finance.

[FR Doc. 88–8244 Filed 4–13–88; 8:45 am]

BILLING CODE 4810–10–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–36765; 34–25559; 35–24617; 39–2157; IC–16354; IA–1112; File No. S7–5–88]

Expedited Publication of Interpretative, No-Action, and Certain Exemption Letters

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is publishing for comment additional amendments to its regulations on Information and Requests to provide for publication of all interpretative, no-action, and certain exemption letters as soon as practicable after such letters are sent or given to requesting parties unless temporary confidential treatment is granted.

DATE: Comments should be received on or before May 16, 1988.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–5–88. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Nancy J. Burke, (202) 272–2880, Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In a companion release,[1] the Commission today adopted revisions to rule 81 under its regulations on Information and Requests [2] to provide generally for prompt publication of interpretative, no-action and certain exemption letters unless temporary confidential treatment is granted. The rule as amended excepts correspondence concerning certain trading practices rules [3] under the Securities Exchange Act of 1934 [4] from prompt publication. Such correspondence remains unpublished for 30 days after the staff's response is first sent or given to the requesting party, as had been the case under prior practice.

Two public commentators suggested that the distinction between trading practices letters and other correspondence subject to the rule is unwarranted and that a uniform system of publication is preferable. The Commission believes these contentions have merit and accordingly is proposing further amendment to rule 81 that will provide for prompt publication of trading practices correspondence. If adopted this amendment will result in uniform procedures for prompt publication of all interpretative, no-action and exemption correspondence except in cases where confidential treatment is extended under the standards of rule 81(b).

[1] Release No. 33–6764.

[2] 17 CFR 200.81.

[3] 17 CFR 240.10b–6, 240.10b–7, 240.10b–8, 240.10b–13 and 240.13e–4.

[4] 15 U.S.C. 78a *et seq.*

I. Discussion

During the comment process for the amendments to rule 81 proposed on September 8, 1987,[5] and adopted today, two commentators expressing general support for the rule amendments opined that the justification for the exception to prompt publication for the trading practices rules was insufficient when compared to the public benefits resulting from more timely publication of interpretative, no-action and exemption letters.[6] They suggested that, except where temporary confidential treatment is granted, the Commission should make all such correspondence public immediately, without regard to the subject of the request. They further stated that transactions forming the basis for requests under the trading practices rules, such as impending public distributions and tender offers, cannot be said to be intrinsically more sensitive to public disclosure than transactions involving other issues, such as exempted securities or transactions under the Securities Act of 1933. As expressed in one of these comments, "we doubt that all or even most * * * [such] correspondence dealing with the trading practices rules can properly be said to present 'sensitive issues' that would merit grant of confidential treatment under the standard articulted in Rule 81(b)." [7] Therefore, unless a request actually reveals information that, if prematurely disclosed, would inhibit legitimate business activity or have unwarranted effects on the securities market, there is no obvious reason to treat trading practices correspondence differently and automatically delay its publication. Both these comments pointed out that the adverse consequences of premature

[5] Release No. 33–6740 [52 FR 35115].

[6] Comment letter from Andrew M. Klein, *et al.*, American Bar Association Section of Corporation, Banking and Business Law, January 4, 1988; *See also* comment letter from Joseph D. Hansen, New York State Bar Association, Banking, Corporation and Business Law Section, November 6, 1987. One other commentator impliedly supported the rule amendment in general but recommended that 30-day confidentiality be maintained for all Williams Act rules on the same grounds that had been suggested for differentiating the trading practices rules in Release No. 33–6740. Comment letter from Henry Lesser, Fried, Frank, Harris, Shriver & Jacobson, October 5, 1987. The Commission believes that, as other commentators observed and Mr. Lesser acknowledged, the availability of confidential treatment under rule 81(b) will adequately address requests involving sensitive, non-public information.

[7] Andrew M. Klein, *et al. op. cit.*, at 3.

publicity may still be avoided in any type of transaction under the confidential treatment procedures of rule 81(b).

The Commission believes these arguments merit consideration. With the adoption of rule 81, the Commission recognized the possibility that premature public disclosure of business plans or transactions under negotiations could be inappropriate in some cases. In circumstances where the consummation of a transaction might be jeopardized, disclosure at too early a stage or unwarranted effects on the public securities markets might be caused, confidential treatment procedures under rule 81(b) have proved adequate to prevent such adverse consequences.[8]

Through rule 81(b), premature publicity may be prevented in appropriate cases at the party's request and with the staff's concurrence. In view of the adequacy of this procedure and in recognition of the argument that a standard of actual, rather than presumed, need for confidential treatment should govern, the Commission is proposing further amendments torule 81 that would elimate the distinction between interpretative, no-action and exemption correspondence based on the subject of the request and provide for prompt publication of all such correspondence.

The uniform standard would render unnecessary the special treatment for requests concerning both the trading practices rules and the other rules administered by the Commission's staff.[9] As a result, administration of the rule would be simplified. Similarly, discrepancies between dates of the staff's responses and public availability dates will be lessened and so provide greater uniformity for convenience of citation.

II. Solicitation of Comments

Any interested persons wishing to submit written comments on the proposed amendments, as well as on other matters that may have an impact on the proposals, are requested to do so. Comments received in response to the request for comments in Release No. 33-6740 will be considered as having been submitted in response to the instant request.

[8] The one commentator opposing the amendments adopted today expressed concern that such consequences might arise from inadvertent failure of a requesting party to seek confidential treatment. Comment letter from Mary K. Bellamy, Investment Company Institute, October 27, 1987, at 2. This concern can be addressed by the attentiveness and judgment of requesting parties and their advisors.

[9] 52 FR at 35116, fn. 10.

III. Cost/Benefit Analysis

The proposed amendments will neither impose additional reporting or record-keeping requirements on nor significantly increase regulatory compliance costs. The principal benefit associated with the amendments is that they would allow more timely public inspection of requests for interpretative, no-action and certain exemptive advice and the staff's responses thereto, thereby assisting the public in its understanding of significant questions arising under the federal securities laws.

IV. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendments proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

V. Statutory Basis

The amended rule is being proposed under section 19 of the Securities Act of 1933; section 23 of the Securities Exchange Act of 1934; section 20 of the Public Utility Holding Company Act of 1935; section 319 of the Trust Indenture Act of 1939; section 38 of the Investment Company Act of 1940; section 211 of the Investment Advisers Act of 1940; and section 1 of the Freedom of Information Act.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

VI. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

1. The authority citation for Part 200, Subpart D, continues to read as follows:

Authority: 80 Stat. 383, as amended, 31 Stat. 54, secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38,211, 54 Stat. 841,855; 5 U.S.C. 552,15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

§ 200.81 [Amended]

2. 17 CFR 200.81 is amended by removing from paragraph (a) the words ". Letters or other written communications with respect to rules 10b-6, 10b-7, 10b-8, 10b-13 and 13e-4 [§§ 240.10b-6, 240.10b-7, 240.10b-8, 240.10b-13 and 240.13e-4 of this chapter] under the Exchange Act, together with any response thereto, shall be made available for inspection and copying by any person 30 days after the response has been sent or given to the person requesting it. All other letters or written communications together with the response thereto, shall be made available for inspection and copying by any person".

By the Commission.

Jonathan G. Katz,

Secretary.

Exhibit A—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the amendments to Rule 81 pertaining to publication of interpretative and no-action letters and other written communications and to codification of the staff's practice of applying the rule to certain exemption letters will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments will neither impose additional reporting or recordkeeping requirements on nor significantly increase the costs for small entities to request interpretative, no-action and certain exemption letters.

David S. Ruder,

Chairman.

Date: April 7, 1988.

[FR Doc. 88-8234 Filed 4-13-88; 8:45 am]

BILLING CODE 8010-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 602

Predisclosure Notification Procedures for Confidential Commercial Information

AGENCY: Arms Control and Disarmament Agency.

ACTION: Proposed rule

SUMMARY: This rule adds provisions to the existing Freedom of Information Act (FOIA) regulations to implement the requirements of Executive Order 12600 of June 23, 1987, that notification be given to parties that have submitted arguably confidential commercial information to an agency whenever a

FOIA request for such information is received by the agency. The procedure is intended to give the submitter an opportunity to object to disclosure of the information and reasonable notice of intent by the agency to disclose the information.

DATE: Comments must be received on or before May 16, 1988.

ADDRESS: Comments may be mailed to Frederick Smith, Jr., Information/Privacy Officer, Room 5731, U.S. Arms Control & Disarmament Agency, 320 21st Street NW., Washington, DC 20451.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., Information/Privacy Officer, (202) 647-3442.

SUPPLEMENTARY INFORMATION:

List of Subjects in 22 CFR Part 602

Freedom of Information Policy and Procedures.

Title 22, Chapter VI, Part 602 is amended as follows:

PART 602—[AMENDED]

1. The authority citation for 22 CFR Part 602 continues to read as follows:

Authority: Sec. 1, 81 Stat. 54, as amended by sec. 1, 88 Stat. 1561 (5 U.S.C. 552) sec. 41, 75 Stat. 635 (22 U.S.C. 2581); and sec. 501, 65 Stat. 290 (31 U.S.C. 9701).

2. Section 602.19 is added to Subpart B to read as follows:

§ 602.19 Predisclosure notification for confidential commercial information.

(a) *When notification is required.* If a request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, seeks a record that contains information submitted by a person or entity outside the Federal government that arguably is exempt from disclosure under exemption 4 of the Act because disclosure could reasonably be expected to cause substantial competitive harm, the Agency shall notify the submitter that such a request has been made whenever:

(1) The submitter has made a good faith designation of information, less than ten years old, as confidential commercial or financial information, or

(2) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) *Notification to submitter.* The notice to the submitter shall either describe the exact nature of the business information requested or provide copies of the recoards or portions of records containing the information. The notice shall afford the submitter a reasonable period of time, based on the amount and/or complexity of the information, within which to object to disclosure.

(c) *Objection by submitter.* Any objection by a submitter to disclosure must be made in writing and sent to: Freedom of Information Officer, U.S. Arms Control and Disarmament Agency, Department of State Building, Washington, DC 20451. It should identify the portion(s) of the information to which disclosure is objected, and should include a detailed statement of all claimed grounds for withholding any of the information under the FOIA and, in the case of exemption 4, an explanation of why the information constitutes a trade secret or commercial or financial information that is privileged and confidential, including a specification of any claim of competitive or other business harm that would result from disclosure.

(d) *Notification to requester.* The Agency shall notify the requester in writing when any notification to a submitter is made pursuant to paragraph (a) of this section.

(e) *When notification is not required.* Notification to a submitter is not required if:

(1) The Agency determines that the information requested should not be disclosed;

(2) Disclosure is required by statute (other than the FOIA) or by regulation;

(3) The information has previously been lawfully published or officially made available to the public.

(f) *Notice of intent to disclose.* If the Agency determines that despite the objection of the submitter the requested information should be disclosed, in whole or in part, it shall notify both the requester and the submitter of the decision and shall provide to the submitter in writing:

(1) A brief explanation of why the submitter's objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date that provides a reasonable period of time between receipt of the notice and the disclosure date.

(g) *Notice of lawsuit.* (1) Whenever a requester brings legal action to compel disclosure of information covered by paragraph (a) of this section the Agency shall promptly notify the submitter in writing.

(2) Whenever a submitter brings legal action to prevent disclosure of information covered by paragraph (a) of this section, the Agency shall promptly notify the requester in writing.

William J. Montgomery,

Administrative Director.

[FR Doc. 88-8116 Filed 4-13-88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-88-1355; FR-2025]

Scope and Nature of FHA Appraisals and Property Inspections

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: As part of its mortgage insurance underwriting procedure, in both single and multifamily programs, HUD requires that a property be appraised and, in the case of single family properties, requires that a statement of appraised value be delivered to the homebuyer before sale. HUD also requires an inspection of properties involving new construction, repairs or rehabilitation. This rule codifies HUD's longstanding position that: (1) Appraisals are made for the purpose of aiding the Department in determining the maximum insurable mortgage amount, and (2) inspections are required to protect the interests of HUD as mortgage insurer. The appraisals and inspections are not performed for the benefit of purchasers, or otherwise to be regarded as a HUD warranty to purchasers of the value or condition of the property.

DATE: Comment due date June 13, 1988.

ADDRESS: Send comments to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: John Coonts, Deputy Director, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-3046. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Before issuing a commitment for multifamily or single family mortgage insurance on a

newly constructed or existing property, HUD requires that (except for certain refinancing cases) the property be appraised to assist it in determining the maximum insurable mortgage amount. With respect to one to four-family properties, HUD also requires lenders to provide purchasers with a form that advises them of HUD's appraised valuation of their property. This form clearly notifies the purchaser that HUD's appraisal was made for mortgage insurance purposes and its not a warranty as to the value or condition of the property. *See* copy #3 of HUD Form 92800.5B (3–87). HUD also may require that a property be inspected to determine whether construction or other defects exist that would make it ineligible for mortgage insurance. The objective of these required appraisals and inspections is to protect the Government and its insurance funds. This rule sets forth in the Code of Federal Regulations a statement describing the limited function of HUD appraisals and inspections. The rule does not establish new policy, nor does it modify existing policy. It reaffirms and codifies what has always been the position of the Department as to the limited function of the appraisals and inspections it requires. The rule is intended to more fully inform prospective FHA mortgagors and the public of the limited role of HUD ordered appraisals and inspections.

HUD Appraisals

The purpose of the insurance applications submitted to HUD by a HUD-approved mortgagee is to secure a commitment from HUD concerning the maximum mortgage loan which HUD is willing to insure for a particular property. In order for HUD (or a Direct Endorsement Mortgagee or coinsuring lender) to determine this maximum insurable amount, it is necessary that an appraisal be performed and that either the HUD appraisal or VA Certificate of Reasonable Value be sent to either the local FHA field office or to the Direct Endorsement Mortgagee or coinsuring lender who is processing the case. After a HUD appraisal is performed, it must be reviewed by either the local FHA field office, the coinsuring lender, or the Direct Endorsement Mortgagee's underwriter. A Statement of Appraised Value then is issued. This Statement of Appraised Value represents an estimate of value *for mortgage insurance purposes.* In other words, the estimate of value arrived at by the reviewer is the amount of which the maximum insurable mortgage loan is determined. It is not necessarily the appraiser's estimate of value, because the reviewer may amend it if there is sufficient evidence to support a higher or lower value. The appraisal is needed to provide the reviewer with essential facts about the property so that a logical conclusion can be reached as to the estimate of value to be ascribed to a property for purposes of a long-term mortgage loan.

This rule expressly states that the HUD appraissed valuation is being made for purposes of protecting the Government's financial interest and determining the maximum mortgage amount and that the mortgagor is responsibile for making those inspections necessary for protecting its interest in the property.

The Government's financial interest in an accurate appraisal is as follows: First, overvaluation results in an unjustifiably high mortgage amount, which causes higher monthly mortgage payments for the mortgagor and, consequently, greater risk of default. Second, when a purchaser defaults the lender may look to HUD, as insurer of the mortgage, for payment of the loan balance. If default does occur an unjustifiably high mortgage amount causes the Government to pay an unnecessarily high mortgage insurance claim.

HUD Inspections

When HUD insures a mortgage for a property to be constructed, rehabilitated or repaired, the Department requires inspections of the work. In *United States* v. *Neustadt,* 366 U.S. 696 (1961), the Supreme Court held that a statement reporting the results of an inaccurate FHA inspection and appraisal could not be a basis for government tort liability to a purchaser who detrimentally relied on the statement, because such statements are "misrepresentations" which are specifically exempted from the Federal Tort Claims Act's (FTCA) waiver of sovereign immunity. 28 U.S.C. 2680.

In *Block* v. *Neal,* 460 U.S. 289 (1983), the Supreme Court reaffirmed *Neustadt.* However, the Court there also held that The Farmers Home Administration (FmHA) possibly could be sued under the FTCA for damages suffered by a FmHA homebuyer because of FmHA's negligent supervision of construction of her home. In short, the Court distinguished misstatements about the condition of the property (which are exempted from suit under the FTCA) from negligence in performing inspections (which the Court held might be the basis of a suit against FmHA).

In the aftermath of *Block,* purchasers of HUD-insured properties have sought tort damages against HUD, alleging that the Department, in inspecting their property, negligently failed to discover construction defects. The FTCA permits recovery in tort only "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with [State law]." 28 U.S.C. 1346(b).

HUD has successfully defended against these claims on the ground that under applicable State law, HUD owes no duty to purchasers as to the accuracy of its inspections, because the inspections are not for the benefit or protection of the purchaser, but rather are for the financial protection of the Department as prospective mortgage insurer. *See Kynerd* v. *U.S. Department of Housing and Urban Development,* 607 F. Supp. 117 (D. Miss. 1985) *aff'd,* 806 F. 2d 259 (5th Cir. 1986).

In the event of default, and in the absence of assignment of the mortgage, HUD as insurer of the mortgage customarily pays the amount due on the mortgage to the private lender and receives the property in exchange (See 24 CFR 203.355–415). HUD then attempts to sell the property to recoup its financial loss. Obviously, the condition of the property affects the price HUD will receive upon the sale. It is therefore in HUD's financial interest to have a property inspected to help assure that its value corresponds to the amount of the insured mortgage. Indeed, the Supreme Court in *Neustadt* recognized that although purchasers may be incidental beneficiaries of HUD fee inspections, the primary purpose of the inspections is for the financial protection of the government. 366 U.S. at 708–09. HUD recently established a Claims Without Conveyance Procedure (24 CFR 203.368) applicable to single family mortgages insured pursuant to conditional commitments issued on or after November 30, 1983, which changes somewhat the procedure described above. Under it a mortgagee may bid a HUD-adjusted fair market price at the foreclosure sale, restain the property, and be paid an insurance claim in the amount of the difference between the HUD-adjusted price and the amount due on the mortgage. Under this new procedure HUD still has a strong financial interest in the condition and value of the property.

So that the public may be more fully informed and unnecessary litigation avoided, HUD is, through this rule, expressly stating in its regulations that HUD inspections are made for the financial protection of the government, not the mortgagor. The Farmer's Home Administration has already published such a clarifying rule. See 45 FR 39789

(June 12, 1980) (codified at 7 CFR 1924.9(a)).)

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely restates existing HUD policy with respect to appraisals and inspections in its mortgage insurance programs.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

The intent of this rule is to make explicit in the Code of Federal Regulations the nature and intent of HUD appraisals and inspections. Although the rule sets forth the position the Department has consistently taken on these matters, reflects longstanding administrative practices, and involves no change or modification of HUD policy or practice, it is being published as a proposed rule in order to provide the public full opportunity, through the public comment procedure, to raise any questions they may have and to receive the benefit of further explanation from the Department where needed. The rule should also serve to prevent unnecessary litigation.

This rule was listed as item H-1-85 (Sequence Number 944) under Office of Housing in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 200

Mortgage insurance.

PART 200—[AMENDED]

1. The authority citation for Part 200 continues to read as follows:

Authority: Secs. 2, 211, and 807, National Housing Act (12 U.S.C. 1703, 1715b, and 1748f); sec. 7(d), Dept. of HUD Act (42 U.S.C. 3535(d)); Subpart G is also issued under sec. 214, Housing and Community Development Act of 1980, as amended by sec. 329, Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a).

2. Section 200.145 is amended by adding a new paragraph (c), to read as follows:

§ 200.145 Technical analysis, underwriting processing and inspections.

* * * * *

(c)(1) As part of its underwriting processing for single and multifamily mortgage insurance programs, HUD may require an appraisal and inspection of the property covered by the mortgage. These appraisals and inspections are performed to determine the maximum insurable mortgage amount and to protect the Government and its insurance funds. They neither create nor imply a duty or obligation from HUD to the mortgagor or any other party and are not to be regarded as a warranty by HUD to the mortgagor or any other party of the value or condition of the property. The mortgagor is responsible for making those investigations and inspections it deems necessary for protecting its interests in the property.

(2) In connection with the insurance of mortgages covering single family homes, HUD requires the seller or builder, or such other person as HUD may designate, to deliver to the purchaser before the sale a written statement of appraised value. This estimate of value is used by HUD in determining the maximum mortgage amount it will insure. The written statement of appraised value is not to be regarded as a warranty by HUD to the mortgagor or any other party as to the value or condition of the property. The purchaser must satisfy himself or herself that the price of the property is reasonable and that its condition is acceptable.

Date: November 4, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-8239 Filed 4-13-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-14-88]

Limitations on Passive Activity Losses and Credits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rule; extension of time for comments.

SUMMARY: This document provides notice of an extension of time for submitting comments on the notice of proposed rulemaking relating to the limitations on passive activity losses and passive activity credits. The extended deadline for submission of written comments is May 31, 1988.

DATE: Written comments must be delivered or mailed by May 31, 1988.

ADDRESS: Send written comments to: Commissioner of Internal Revenue, Attn: CC:LT:T (LR-14-88) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michael J. Grace of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, CC:LR:T, telephone 202-566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking published in the **Federal Register** for Thursday, February 25, 1988 (53 FR 5733), comments and requests for a public hearing with respect to the proposed rules were to be delivered or mailed to the Commissioner of Internal Revenue, Attn: CC:LR:T, (LR-14-88), Washington, DC 20224, by April 25, 1988. The date by which comments with respect to the proposed rules must be delivered or mailed is hereby extended to May 31, 1988. By a notice of public hearing published in the **Federal Register** for Tuesday, March 29, 1988 (53 FR 10,104), the public hearing with respect to the proposed rules was scheduled for Tuesday, June 28, and (if necessary) Wednesday, June 29, 1988. Outlines of oral comments to be presented at the hearing by persons who submit or have submitted comments must be delivered or mailed by Tuesday, June 14, 1988..

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 88-8209 Filed 4-13-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 88-02]

Regatta; Sacramento Water Festival

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is considering a proposal to amend § 100.1202 of Title 33, Code of Federal Regulations. The purpose is to extend the period of time the Sacramento River is closed during the Sacramento Water Festival.

DATES: Comments must be received on or before May 31, 1988.

ADDRESSES: Comments should be mailed to Eleventh Coast Guard District Boating Safety Division, 400 Oceangate Boulevard, Long Beach, California 90822-5399. The comments and other materials referenced in this notice will be available for inspection and copying at 400 Oceangate Boulevard, Room 914, Long Beach, California. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT K.S. Gregory, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822-5399, Tel: (213) 499-5318.

SUPPLEMENTARY INFORMATION: Interested pesons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD11 88-02] and specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT K.S. Gregory, project officer, Eleventh Coast Guard Boating Affairs Office, and LT G. R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The Sacramento Water Festival Association has requested a change in the dates for the Sacramento Water Festival. This Festival is an annual three-day event integrating aquatic activities involving community participation and International Outboard Grand Prix racing. Approximately 125 ski boats, 17 feet in length, are expected to participate in this event and will pose a hazard to navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is deemed necessary. It involves negligible cost and will not have a significant effect on recreational vessels, commercial vessels or other marine interests.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that they will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend § 100.1202 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for § 100.1202 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.1202(a) is revised to read as follows:

§ 100.1202 Sacramento Water Festival.

* * * * *

(a) *Effective dates.* This section is effective from 0900 to 1800 PDT the first Friday, Saturday, and Sunday in July, except for those years when July 4th falls on Monday. In those years, the effective date of these regulations will be the first Saturday, Sunday and Monday in July, as published in the LOCAL NOTICE TO MARINERS.

* * * * *

A. Bruce Beran,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 88-8203 Filed 4-13-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD5-88-15]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Sunset Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the North Carolina Department of Transportation and the Town of Sunset Beach, North Carolina, the Coast Guard is considering adopting new regulations to govern the operation of the drawbridge across the Atlantic Intracoastal Waterway (AICWW) at mile 337.9, at Sunset Beach, North Carolina, by restricting the number of bridge openings during the boating season. This proposal is being made to alleviate vehicular traffic congestion caused by the steady increase in recreational boats on the AICWW during the boating season, and the resulting increase in bridge openings. This action should accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before May 31, 1988.

ADDRESSES: Comments should be mailed to Commander(ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 609, between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. The Commander, Fifth Coast Guard District, will evaluate all

communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and CDR Robert J. Reining, project attorney.

Discussion of Proposed Regulations

The North Carolina Department of Transportation and the Town of Sunset Beach, North Carolina, have requested that the drawbridge be regulated to open on the hour, daily, between 7:00 a.m. and 7:00 p.m., from April 1 through October 31. The bridge currently opens on signal at all times. This request is being made as a result of the steady increase of recreational boat traffic on the AICWW since 1966. The increased boat traffic has resulted in an increase in the number of draw openings, which are causing considerable vehicular traffic backups up to the ocean front (Main Street) and beyond the town limits on Highway 179. Businesses are being impacted by the cross streets being closed off due to traffic jams caused by bridge openings. The Town Council of Sunset Beach has found it necessary to hire two additional traffic control officers to keep the vehicular traffic flowing as a result of bridge openings. The police are having a difficult time clearing the mainland side of Sunset Beach for the through traffic to Calabash and Ocean Isle. Because they have to spend a great deal of their time directing traffic to prevent accidents, they are unable to patrol the beach as much as they feel they should. The Town of Sunset Beach considers this a serious pubic safety problem.

The vehicular traffic volume has increased considerably since 1966 from 320 vehicles per day to 2,100 vehicles per day in 1986. During this same timeframe, the number of bridge openings has increased from 4,524 to 6,530 during the boating season which occurs from April through October. This proposal would amend 33 CFR 117.821. That section was recently revised by a rule published in the Federal Register on March 17, 1988 (53 FR 8751).

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the proposed regulation will have no effect on commercial navigation, or on any industries that depend on waterborne transportation. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. The heading of § 117.821 is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach, North Carolina.

3. In § 117.821, paragraph (b)(7) is added to read as follows:

(b) * * *

(7) NC 50 bridge, mile 337.9, at Sunset Beach, NC, from April 1 to October 31, between 7:00 a.m. to 7:00 p.m., must open if signaled on the hour.

* * * * *

Dated: April 1, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88–8202 Filed 4–13–88; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3365–4]

Louisiana Lead SIP Revision for the Baton Rouge Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes approval of a revision to the Louisiana State Implementation Plan (SIP) for lead. On July 28, 1982 (47 FR 32529), EPA approved the Louisiana Lead SIP as submitted to EPA except for the portion dealing with the Baton Rouge area, due to additional modeling required around Ethyl Corporation. On May 1, 1984 (49 FR 18484), EPA published the approval notice for the rest of the Louisiana lead SIP. The State's lead control plan for Ethyl facility was included in a State Compliance Order which was signed into effect October 31, 1983. On July 18, 1986, the Governor of Louisiana submitted to EPA an amended Compliance Order for Ethyl Corporation in order to change the operations of the facility as required in the original October 31, 1983, Compliance Order issued by the State of Louisiana to Ethyl Corporation.

DATE: Comments on this action must be received by June 13, 1988.

ADDRESSES: Written comments on this action should be addressed to Thomas H. Diggs of the EPA Region 6, Air Programs Branch, SIP/New Source Section (address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, Air, Pesticides and Toxics Division, Air Programs Branch, SIP/New Source Section, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, P.O. Box 44096, Baton Rouge, Louisiana 70804.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joe Winkler, EPA Region 6, Air Programs Branch, 1445 Ross Avenue, Dallas, Texas 75202–2733 telephone (214) 655–7214, or (FTS) 255–7214. Reference Docket File Number LA–86–4.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1978, the National Ambient Air Quality Standard (NAAQS) for lead was promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (ug lead/m^3) average over a calendar quarter. As required by Section 110 of the Clean Air Act (CAA), and the October 5, 1978 promulgation of the NAAQS for lead, all States must submit a SIP which will provide attainment and maintenance of the lead NAAQS. Louisiana has developed and submitted such as SIP.

On July 28, 1982, (47 FR 32529), EPA approved the Louisiana lead SIP as submitted to EPA except for the part of the SIP concerning the Baton Rouge

area. Due to additional modeling required to correct discrepancies that existed between EPA and State modeling for Ethyl Corporation in Baton Rouge, Louisiana, EPA delayed action on the Baton Rouge area until the State could submit additional information for the Ethyl facility.

On May 1, 1984 (49 FR 18484), EPA published the final approval notice for the rest of the Louisiana lead SIP.

On July 18, 1986, the Governor of Louisiana submitted to EPA a revision to the lead SIP which had been approved previously on May 1, 1984, by EPA. A public hearing was held concerning the State's lead SIP revision on December 18, 1985.

II. Description of the Revision to Louisiana Lead SIP

The July 18, 1986, State submittal consisted of an amended Compliance Order for the Ethyl Corporation facility located in Baton Rouge, Louisiana. It also contained the formulas which Ethyl Corporation committed to use in calculating their emission rates. Also, the atmospheric modeling which determined the magnitude of the source's lead emissions was submitted as part of the SIP revision.

The amendments to the Compliance Order are due to change in operations in the facility. The original Compliance Order was issued to Ethyl Corporation on October 31, 1983. This Compliance Order required the Ethyl facility, in order to meet the emission limitations for lead, to raise the height of the six reverberatory furnace stacks to a height of 179 feet, and to limit the operation of the facility to no more than five reverberatory furnaces operating at any one time.

In the amended Compliance Order, it is noted that Ethyl Corporation informed the Secretary of the Louisiana Department of Environmental Quality (LDEQ) of the cessation of the lead alkyl production as of June 26, 1985. It is also noted that the facility is now in cleaning up operations which involves burning of lead sludge in two of the reverberatory furnaces and the rotary furnace. These operations are in effect for a maximum of eight hours daily. The amended Compliance Order also noted that Ethyl Corporation requested that the requirement for conducting stack sampling of the lead furnaces on or before July 1, 1986, be deleted from the Compliance Order.

The amended Order requires Ethyl Corporation to comply with the following: (1) To immediately cease operations in four of their six reverberatory furnaces, (2) to emit not more than a quarterly average total of 0.22 grams of lead per second from the furnaces in the lead alkyl facility, (3) to submit written annual reports to the LDEQ until operations at the facility are permanently discontinued, (4) to submit emission rates to the LDEQ Air Quality Division as part of the annual report, and (5) to maintain compliance records on site for at least two years for inspection purposes.

Previous air quality analyses submitted by the LDEQ have not provided adequate bases to demonstrate that the proposed control strategy will result in attainment and maintenance of the lead standard in the Baton Rouge area. The modeling submitted in 1983 employed a screening approach where a refined technique was warranted. In another attempt under the original compliance order, the LDEQ submitted a modeling analysis lacking adequate justification for a reduced meteorological data set.

In general, there are four elements considered in the application of an air quality model: (1) Input of the sources of emissions, (2) selection of a meteorological data set which best represents dispersion and transport in the area, (3) identification of receptors, and (4) choice of model options. The review of LDEQ's most recent air quality analysis of February 4, 1987 considered these elements.

The ISCST model, as recommended in EPA's Guideline on Air Quality Models, was used by the LDEQ to evaluate impact of Ethyl Corporation's lead emissions on the ambient air. Source emissions were adequately considered in the analysis including the effects of aerodynamic downwash. The meteorological data set, which includes Baton Rouge surface data and Lake Charles upper air data for the years 1975 through 1979 is adequate. The receptor network is somewhat limited near plant property due to the application of ISCST Version 5.

The most recent version of ISCST, i.e., Version 6, was available at the time LDEQ prepared the air quality modeling analysis, but was not applied. It is believed that the use of Version 5 model options does not result in air quality estimates which are reflective of the technically best analysis ensuring consistency.

Before finalizing this revision to the SIP, the ISCST modeling must be reworked by the State using Version 6. It is judged to be very unlikely that the revised analysis including background lead concentration will show results different from the current analysis which predicts that no concentration will exceed the lead standard in the area.

Proposed Action

EPA has evaluated the revision to the Baton Rouge portion of the Louisiana lead SIP. The proposed SIP revision meets the requirements of EPA regulations and policy; therefore, EPA is proposing approval. EPA believes that the revision to the SIP is adequate to attain and maintain the lead NAAQS throughout Baton Rouge through the implementation of the amended Compliance Order for the Ethyl facility.

Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received with thirty days of the publication of this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that this SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: December 17, 1986.

Frances E. Phillips,

Acting Regional Administrator.

Editorial Note: This document was received at the office of the Federal Register on April 11, 1988.

[FR Doc. 88–8186 Filed 4–13–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1356

Title IV–E Adoption Assistance Program; Nonrecurring Expenses

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is issuing this Notice of Proposed Rulemaking (NPRM) in order to implement the changes made in the Adoption Assistance Program under title IV–E of the Social Security Act by the Tax Reform Act of 1986 (Pub. L. 99–514).

This rule proposes to require States to reimburse the nonrecurring adoption expenses of parents who adopt children with special needs. Federal financial

participation (FFP) is available at the matching rate of 50 percent up to a $2,000 expenditure for each adoptive placement. States may set either a lower or a higher maximum and are thus not precluded from spending more or less than $2,000. However, Federal participation is limited to a 50 percent share of up to a $2,000 State expenditure level.

DATE: Comments must be received on or before June 13, 1988.

ADDRESSES: Comments may be mailed to the Associate Commissioner, Children's Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, Attention: Dan Lewis.

Comments received in response to this rule may be reviewed in Room 2030B of the Donohoe Building, 400 Sixth St. SW., Washington, DC between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday except Federal holidays, beginning two weeks after the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Beverly Stubbee, (202) 755–7447.

SUPPLEMENTARY INFORMATION:

I. Background of section 1711 of the Tax Reform Act of 1986

The Tax Reform Act of 1986 (Pub. L. 99–514) repealed section 222 of the Internal Revenue Code which permitted an itemized deduction of up to $1,500 of expenses incurred by an individual in the legal adoption of a child with special needs who was eligible for adoption assistance as provided under title IV–E of the Social Security Act (the Act). Deductible expenses included reasonable and necessary adoption fees, court costs and attorney fees.

As an alternative to the repealed section 222 of the Internal Revenue Code, the Tax Reform Act of 1986 amended title IV–E of the Act to require States to make payments of nonrecurring adoption expenses incurred by or on behalf of adopting parents in connection with the adoption of special needs children. The statute provides 50 percent Federal matching funds to a State, as an administrative cost of title IV–E, for payment of such nonrecurring adoption expenses. As set forth in the report of the Committee on Ways and Means of the House of Representatives, the legislative history indicates that Federal benefits for families adopting children with special needs are more appropriately provided through an expenditure program, rather than through an itemized deduction. The Committee recognized that the itemized deduction provided relatively greater benefit to higher income taxpayers who presumably have less need for Federal assistance, and provided no benefit to taxpayers who did not itemize deductions in their tax returns. Further, this statutory change also accomplished another purpose of the Congress, which was to give agencies with responsibility and expertise in the area of adoption assistance direct control over the assistance provided to families that adopt children with special needs. See H.R. Rep. No. 99–426, 99th Cong. 1st Sess. 875 (1985).

These changes made by the Tax Reform Act are effective for tax years beginning on or after January 1, 1987, and for expenditures made after December 31, 1986. Parents who incur nonrecurring expenses of adoption on or after January 1, 1987 may apply for reimbursement of these expenses from their appropriate State agency.

Payments for nonrecurring expenses of adoption must be made available to any adopting parents of a child with special needs as long as the child meets the State's definition of "special needs" based on section 473(c) of the Act and has been placed for adoption in accordance with applicable State and local laws. There must also be a signed agreement between the adopting parents and the State or local agency specifying the amount to be reimbursed by the agency for these nonrecurring expenses of adoption. Payment for nonrecurring expenses shall be made without regard to the adopting parents' income or financial resources. The amount shall be agreed upon between the State agency and the parents.

In order to comply with the revised requirements, some States may need to amend their statutes so that nonrecurring expenses of all adopting parents of children with special needs can be paid by the State and claimed as administrative costs of title IV–E. Such States will have until the close of the second general legislative session following the date of publication of the final rule to make any necessary changes in State statutes. Failure to provide reimbursement for eligible claims from January 1, 1987 will result in a State being considered out of compliance with section 473 of the Act.

II. Program Description

The Adoption Assistance Program under title IV–E of the Act is designed to assist States in placing certain "special needs" children in adoptive homes, thereby providing families and homes for more children and reducing States' foster care caseloads. In order to be eligible for adoption assistance under title IV–E, a child must be eligible for either Aid to Families with Dependent Children (AFDC), title IV–E Foster Care or Supplemental Security Income for the Blind and Disabled (SSI) and meet the definition of "a child with special needs" according to section 473(c) of the Act. A child is considered a child with special needs only when the State has determined (1) that the child cannot or should not be returned to the home of the parents; and (2)(A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing assistance, and (B) that, except where it would be against the best interests of the child a reasonable, but unsuccessful, effort has been made to place the child without providing adoption assistance.

The amendment to title IV–E in the Tax Reform Act expanded FFP in adoption assistance to include payments made by States for the nonrecurring expenses of adoption of any child with special needs, not just those who are title IV–E eligible and receiving adoption assistance payments.

III. Summary of Proposed Regulatory Changes

This NPRM proposes a process by which FFP for nonrecurring expenses of adoption shall be made available to any parent who adopts a child with special needs; imposes a limitation on the amount of Federal reimbursement available for expenses borne by the parents; specifies the terms of the nonrecurring expenses agreement; defines the eligibility of the child; and outlines the fiscal requirements that control FFP in the States' payments.

A. Discussion of Proposed Limitation on Federal Reimbursement

1. Limits on Federal Reimbursement

This NPRM proposes to limit Federal matching (at a 50 percent rate) to a maximum State expenditure of $2,000 for each adoptive placement. For States that wish to exceed the $2,000 maximum, FFP will be limited to 50 percent of $2,000. States may also set a reasonable maximum that is less than $2,000, consistent with practices within the State. (See discussion in section 2 below.)

The $2,000 figure was based on information from the field of adoption. We drew heavily on information made available by the National Committee for

Adoption (NCFA) whose member agencies represent private, nonprofit adoption agencies, the majority of which are sectarian in affiliation. The NCFA agencies are located in 45 States across the country and place healthy children as well as children with special needs.

In the March–April 1987 issue of *National Adoption Reports*, a publication of NCFA, the results of a survey of its member agencies were reported. According to the 120 agencies that responded, most of the adoptive placements of children with special needs were arranged without fees of any kind to the adoptive parents. When expenses were borne by the families, they included legal services/fees and some costs of the agencies in the preparation and supervision of the adoptive placement. Average costs were in the $1,500 range.

Although no comparable data are available from proprietary agencies or independent agents, we believe that the number of children with special needs placed by such agents is very small and would not skew the data upon which our estimates are based.

The legislative history of section 1711 contemplated that limits would be set. We believe the limit set is reasonable in terms of the usual types of costs incurred by adopting parents of special needs children.

We recognize that some families might incur higher costs and some may find their expenses less than what was reported by NCFA. We believe that the $2,000 reimbursable by the States to families will be sufficient in most cases to meet the majority of nonrecurring expenses of adoption. We note that under the repealed section of the Internal Revenue Code, the maximum amount realizable by a family would have been $750 (for a family itemizing deductions in the 50 percent tax bracket). We specifically invite comment from the public on the dollar limit being proposed and ask for discussion and information on the expenses incurred by families in their adoption of special needs children.

2. State Option on Limiting the Amount of Reimbursement

The NPRM also proposed to permit States the option of setting a reasonable maximum based on State practice that is less than $2,000 on the amount to be paid to adoptive parents for nonrecurring expenses of adoption. The legislative intent to permit States this authority is clearly stated in the House Committee on Ways and Means Report:

> This general authority for a State to set limits on the amount of assistance to be provided to adoptive parents will also apply under the bill to "nonrecurring" adoption expenses * * *. In other words, as under present adoption assistance agreements, a State may set limits on the amount of the expenses to be financed by the State * * * (See H.R. Rep. No. 99–426, 99th Cong. 1st Sess. 876 (1985))

However, a State maximum lower than $2,000 must not be overly restrictive and must be based on reasonable charges, consistent with State and local practices, for special needs adoption within a State. The basis for setting a lower maximum must be documented and explained.

B. Section by Section Discussion of Proposed Changes in Part 1356

In section 1356.40, Adoption Assistance Program: Administrative requirements to implement section 473 of the Act, the NPRM proposes amending paragraphs (b) (1), (3) and (4) to comport with statutory changes. In paragraph (b)(1) the phrase "* * * at the time of or prior to the interlocutory decree * * *" is rescinded because the statutory amendment removed the reference to an interlocutory decree. Also as a result of the statutory amendment, the work "nature" has been added in paragraph (b)(3) to the language describing the payments, services, and assistance which the adoption assistance agreement must address. The second clause in paragraph (b)(3), however, in relation to eligibility for title XIX of the Act, is applicable only to children eligible for adoption assistance in accordance with section 473(a)(1)(B)(ii).

A technical change has been made to § 1356.40(b) so that it comports with section 475(3)(B) of the Act and section 101(a)(4)(A) of Pub. L. 96–272. The current regulation requires that the adoption agreement remain in effect if a family changes its State of residence. In fact, section 101(a)(4)(A) of Pub. L. 96–272 requires the adoption agreement to remain in effect not only if a family moves to another State, but also if the family adopting the child lives in a State different from the one placing the child. We believe the proposed regulation makes these two situations clear as it requires the adoption agreement to remain in effect "regardless of the State of which the adoptive parents are residents at any given time."

Section 1356.40(c) has been removed since statutory amendments struck out the term "interlocutory decree." Sections 1356.40 (d), (e), (f), and (g) are redesignated as paragraphs (c), (d), (e), and (f), respectively.

A new section, 45 CFR 1356.41, has been added to address nonrecurring expenses of adoption as an expenditure made for the proper and efficient administration of the title IV–E Adoption Assistance Program. Paragraph (a) of § 1356.41 specifies that the amount of payment for nonrecurring expenses of adoption shall be determined through agreement between the State or local agency and the adopting parents.

Paragraph (b) of § 1356.41 proposes to prohibit the imposition of income eligibility requirements (means test) on adopting parents of children with special needs for State payment of nonrecurring expenses of adoption.

Paragraph (c) of § 1356.41 proposes to require that the child for whom nonrecurring expenses of adoption are being paid must be a child with special needs as defined by the State agency in its title IV–E Adoption Assistance Program (section 473(c)), except that the requirement for an effort to place the child with adoptive parents without providing adoption assistance is not applicable.

Paragraph (d) of § 1356.41 proposes, at State option, the payment of nonrecurring expenses of adoption of children with special needs from foreign countries. This provision also requires that a State make clear in its definition of a "child with special needs" whether it will include or exclude such children for the payment of nonrecurring expenses.

Paragraph (e) of § 1356.41 requires the State agency to notify all appropriate courts and all public and licensed private nonprofit adoption agencies within the State of the availability of funds for expenses incurred by or on behalf of families adopting children with special needs. This requirement makes clear the obligation of the State agency to inform all interested parties of the availability of this new program to replace the tax deduction formerly available under the Internal Revenue Code and where and how interested persons may apply for these funds.

Paragraph (f) of § 1356.41 limits the amount of nonrecurring adoption expenses that can qualify for Federal matching to a maximum State expenditure of $2,000 for any adoptive placement. Title IV–E funds are available at the administrative cost matching rate of 50 percent. The limitation on the amount of Federal funds available to reimburse these costs is explained in section III above. Also as discussed above, this provision also permits States to set a reasonable maximum lower than $2,000 on the amount to be paid to adoptive parents for nonrecurring expenses of adoption.

Paragraph (g) of § 1356.41 limits FFP for nonrecurring expenses of adoption incurred by or on behalf of adoptive parents to expenses that are not otherwise reimbursed from other sources. It also provides that such payments shall be made either directly through the State agency or through another public or licensed nonprofit private agency.

Paragraph (h) of § 1356.41 restates the statutory defintion of the term "nonrecurring adoption expenses." It also adds, for specificity, a definition of the term "other expenses" as used in the statutory definition. We propose to define "other expenses" as the costs incurred by or on behalf of the parents for the adoption study, including health and psychological examination and consultation, supervision of the placement prior to completion of adoption, and transportation and reasonable costs of lodging and food for the child and adoptive parents when necessary to complete the placement or adoption process.

Paragraph (i) of § 1356.41 proposes to allow States until the end of their legislative sessions following publication of the final rule to make amendments to their statutes in order to comply with Federal law.

Paragraph (j) of § 1356.41 proposes to define when an expenditure is considered made, in order to determine the period of time during which the State must make its claim for Federal reimbursement.

Finally, paragraph (c) of § 1356.60 of the current regulations will be deleted. The proposed § 1356.41 in accordance with statutory requirements directs States to claim reimbursement for nonrecurring expenses of adoption as administrative costs under title IV–E. Thus, the prohibition on reimbursement of nonrecurring adoption costs and administrative costs set forth in § 1356.60(c)(4) should be deleted.

IV. Impact Analysis

Executive Order 12606: The Family

Executive Order 12606 requires Federal agencies, in formulating and implementing policies and regulations, to assess the impact on family formation, maintenance and general well being. We believe these proposed regulations will serve to strengthen and preserve family life and send a message of support and encouragement to all families who adopt children with special needs. This proposed regulation should have a significant positive impact in matters related to family life. Although no precise figures are available, as many as 20,000 families may recieve reimbursement under this program for costs related to adopting special needs children.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact anlaysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or certain other specified effects. Nothing in either the statute or the proposed rule is likely to create substantial costs. The Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 5), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed or final rule.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of this NPRM to OMB for its review of the information collection requirements. However, we do not believe there are any new information collection requirements as State agencies administering the title IV–E Adoption Assistance Program are already utilizing a format for adoption assistance agreements which may also be used with applicants for reimbursement of nonrecurring expenses of adoption.

Organizations and individuals desiring to submit comments on information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS.

List of Subjects in 45 CFR Part 1356

Adoption assistance, Administrative costs, Nonrecurring expenses of adoption.

(Catalog of Federal Domestic Assistance Program No. 13.659 Adoption Assistance)

Dated: February 4, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: March 14, 1988.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble, we are proposing to amend 45 CFR 1356.40 and to add a new section 1356.41 as follows:

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

1. The authority statement for Part 1356 continues to read as follows:

Authority: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272 as amended, 42 U.S.C. 670 *et seq.*, 94 Stat. 501, 42 U.S.C. 620 *et seq.*, 94 Stat. 516 *et seq.*, section 1102 of the Social Security Act as amended, 42 U.S.C. 1302.

2. Section 1356.40 is amended by revising paragraphs (b)(1), (b)(3) and (b)(4) as follows:

§ 1356.40 [Amended]

* * * * *

(b) The adoption assistance agreement must meet the requirements of section 475(3) of the Act and must:

(1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and

* * * * *

(3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and

(4) Specify, with respect to agreements entered into on or after October 1, 1983 that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time.

* * * * *

3. Section 1356.40 is further amended by removing paragraph (c) and redesignating paragraphs (d), (e), (f) and (g), respectively as paragraphs (c), (d), (e) and (f).

4. A new § 1356.41 is added to read as follows:

§ 1356.41 Nonrecurring expenses of adoption.

(a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the State or local agency administering the program. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

(b) There must be no income eligibility requirement (means test) for adopting parents in determining whether payments for nonrecurring expenses of adoption shall be made.

(c) For purposes of payment of nonrecurring expenses of adoption, the State must determine that the child is a "child with special needs" as defined by the State based on sections 473(c) (1) and (2)(A) of the Act, and that the child has been placed in accordance with applicable State and local laws; the child need not meet the categorical eligibility requirements at section 473 (a)(2) or 473(c)(2)(B).

(d) At State option, the State may pay nonrecurring expenses of the adoption of children with special needs from foreign countries, through a licensed or approved domestic nonprofit adoption agency. Such payments are eligible for FFP up to the maximum amount stated in 45 CFR 1356.41(f) or the State maximum, whichever is lower. The State shall make clear in its definition of "a child with special needs" whether such children will be included or excluded.

(e) The State agency must notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for the nonrecurring expenses of adoption of children with special needs, as well as where and how interested persons may apply for these funds.

(f) Funds expended with respect to nonrecurring adoption expenses incurred by or on behalf of parents who adopt a child with special needs shall be considered an administrative expenditure of the title IV–E Adoption Assistance Program. Federal reimbursement is available at a 50 percent matching rate up to a $2,000 State expenditure for any adoptive placement. States may set a reasonable lower maximum.

(g) Federal financial participation for nonrecurring expenses of adoption is limited to costs incurred by or on behalf of adoptive parents that are not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made either directly by the State agency or through another public or licensed nonprofit private agency.

(h) The term "nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State or Federal law, and which have not been reimbursed from other sources of funds. "Other expenses which are directly related to the legal adoption of a child with special needs" means the costs incurred by or on behalf of the parents for the adoption study, including health and psychological examination or consultation, supervision of the placement prior to adoption as well as transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

(i) A State needing to amend its statute so that nonrecurring expenses of *all* adopting parents of children with special needs can be reimbursed by the State will have until the close of the second general legislative session following the date of publication of the final rule to make any necessary changes in State statute. Such legislation must apply to all claims effective January 1, 1987. Failure to provide reimbursement for eligible claims from January 1, 1987 will result in the State being considered out of compliance with the Act.

(j) A State expenditure is considered made in the quarter during which the payment was made by a State agency to a private nonprofit agency, individual or vendor payee.

§ 1356.60 [Amended]

5. Section 1356.60 is amended by removing paragraph (c)(4) and redesignating paragrah (c)(5) as (c)(4).

[FR Doc. 88–8223 Filed 4–13–88; 8:45 am]
BILLING CODE 4130–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 88–10]

Amendment to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend § 502.92 of its Rules of Practice and Procedure, which governs the filing of special docket applications. The purpose of the amendments is to repeal the requirement for the joinder of conferences in special docket applications filed by their members, to clarify language regarding designation of the appropriate tariff for notice purposes, and to make other changes to conform to the Shipping Act of 1984.

DATE: Comments due on or before May 16, 1988.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1110 L Street NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: The Commission rule which governs the filing of special docket applications in the foreign commerce of the United States, is found at 46 CFR 502.92 ("Rule 92"). This rule, which implements the provisions of section 8(e) of the Shipping Act of 1984, 46 U.S.C. app. 1707(e) ("1984 Act"), requires the joinder of conferences in applications for permission to refund or waive collection of a portion of freight charges, filed by their members.[1] Since the adoption of Rule 92, the Commission has treated conferences as indispensable parties in special docket proceedings initiated by their member lines.[2] The joinder is intended to ensure that conferences are appraised of and will proceed in accordance with the actions taken by their member carriers [3] and publish in

[1] Section 8(e) reads in part:

Refunds. The Commission may, upon application of a carrier or shipper, permit a common carrier or conference to refund a portion of freight charges from a shipper or to waive the collection of a portion of the charges from a shipper * * *.

[2] Part 502—Rules of Practice and Procedure, 21 F.M.C. 340, 343 (1978). *Application of Hapag Lloyd, AG for the benefit of General Motors Corp., 23 S.R.R. 201, 205–206 (1985); Application of Lykes Bros. S.S. Co., Inc. for the Benefit of Catholic Relief Services,* 23 S.R.R. 1541, 1542 (1986).

[3] Section 8(e)(2), 46 U.S.C. app. 1707(e)(2), provides:

The common carrier or conference has, prior to filing an application for authority to make a refund, filed a new tariff with the Commission that sets forth the rate on which the refund or waiver would be based;

the common tariff the notice required by section 8(e)(3) of the 1984 Act if the application is granted.[4] However, this objective can be accomplished without requiring a conference's participation in the application filed by a member line.[5]

Under the Commission's rules governing the filing of tariffs in the foreign commerce, a conference has a duty to maintain a common tariff for its members.[6] This broad obligation would appear to obviate any need for conference concurrence in a special docket application to meet the requirements of section 8(e)(2) and 8(e)(3) of the 1984 Act. Although the conference tariff is involved, the fact is that, ultimately, the carrier and not the conference is responsible for any permitted refund or waiver or collection of freight charges. The conference's concurrence, therefore, would not appear to be necessary to meet this end. In regard to the section 8(e)(2) "corrected rate" requirement, when the corrected rate is filed pursuant to independent action or in an "open" rate section of the tariff, the conference acts more in the capacity of a publishing agent. Additionally, even when the corrected rate involves a conference rate agreed to by the membership, the very act of filing the corrected conference rate in the tariff prior to the application fulfills the requirement, again rendering concurrence superfluous. Finally, although section 8(e)(3) requires the conference to agree to the filing of "an appropriate notice" if the special docket application is granted, this does not appear to necessitate actual conference joinder in the application in view of the general responsibility of the conference to file tariffs on behalf of its members.

The Commission, therefore, is proposing to repeal the requirement that conferences concur in special docket applications filed by member lines.[7] We propose, however, to require that a conference carrier serve a copy of the application on the conference simultaneously with the filing at the Commission. The carrier would also be required to make a certification to that effect in the application. This would provide additional notice to the conference of the filing. A similar requirement would also be made of shippers filing special docket applications. The proposed rule would obligate a shipper to serve a copy of the application on the conference and/or common carrier and to certify to that effect in the application.

The discussion above focused on the concurrence of a conference in an application filed by a member line. However, there are also situations where a conference itself, and on its own behalf, files a special docket application involving shipments of one or more carrier members.

While section 8(e) of the 1984 Act makes specific provision for the filing of applications by shippers and carriers, it does not expressly provide for such filings by conferences, as did the Shipping Act, 1916, 46 U.S.C. app. 801. However, subparagraphs (2) and (3) of section 8(e) continue to refer to conference participation through the filing of a new tariff and an appropriate notice upon approval of the application by the Commission. The introductory paragraph of section 8(e) also provides that while an application may be filed by a carrier or a shipper, the Commission may "permit a common carrier or *conference* to refund the portion of freight charges collected * * *." (emphasis added)

Therefore, while an arguent could be made that a conference is no longer allowed to file an application, the better approach would appear to be to continue to permit a conference filed application *on behalf of* a carrier member. The application is then considered as that of the carrier member, consistent with the language of the statute. The Commission has always required that the carrier member file a concurrence with a conference application and will continue to do so. Viewed in this manner, conference applications are similar to those submitted by tariff publishing services on behalf of a particular carrier. Therefore, while we are proposing to delete the references to "conference" filings in § 502.92(a) (1) and (2), we are not proposing to prohibit the filing by a conference *on behalf of its member(s)* and we would treat such a filing as actually that of the conference member line which would be required to furnish a concurrence.

Another concern regarding special docket procedures involves the designation of the appropriate tariff for the notice required pursuant to section 8(e)(3). The situation described above regarding a former conference member filing a special docket application, and the role of the conference in the application, also serves as an example of this notice problem. If the carrier was a member of the conference at the time of shipment but has since resigned from the conference, a question arises as to where the notice should be filed. Other situations in which this question arises include a carrier joining a conference after the shipment is made, the dissolution of a conference, or a situation where a conference is superseded by another in the time frame between the tariff error and grant of the application.

It is difficult to formulate a rule of general application for such situations. Accordingly, designation of the appropriate tariff is best left to the presiding Administrative Law Judge ("ALJ") on an ad-hoc basis. However, we believe that additional guidance to the ALJ in this regard is necessary and § 502.92(c) is therefore proposed to be amended to reflect the discretion and responsibility granted to the ALJ in designating the appropriate tariff.

Exhibit No. 1 to Subpart F would also be amended to reflect deletion of conference joinder in the application and other clarifying language.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or investment productivity, innovations, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C.

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[4] Section 8(e)(3), 46 U.S.C. app. 1707(e)(3), provides:

The common carrier or conference agrees that if permission is granted by the Commission, an appropriate notice will be published in the tariff, or such other steps taken as the Commission may require that give notice of the rate on which the refund or waiver would be based, and additional refunds or waivers as appropriate shall be made with respect to other shipments in the manner prescribed by the Commission in its order approving the application; * * *.

[5] The existing conference concurrence requirement has raised a number of issues regarding interpretation. One example is whether a conference needs to join in the application of a *former* member which applied for relief on a shipment carried before that member's resignation from conference membership. In this instance, the conference would not appear to be a necessary party because the carrier's resignation from the conference ends the conference's obligation to act as a tariff filing agent for the carrier and it could not publish the tariff notice contemplated in section 8(e)(3) of the 1984 Act for the benefit of that carrier.

[6] *See* 46 CFR Part 580—*Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States*, § 580.3(j) (1) and (2).

[7] The concurrence under discussion only goes to an agreement to file a corrected tariff and tariff notice. A statement from the conference as to the facts surrounding the application may still be required to be submitted in a particular case to support the application.

605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this Notice of Proposed Rulemaking because the proposed amendments to Part 502 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

Therefore, pursuant to 5 U.S.C. 553 and section 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716(a), Part 502 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 502—[AMENDED]

1. The authority citation for Part 502 reads as follows:

Authority: 5 U.S.C. 552, 553, 559; 18 U.S.C. 207; secs. 18, 20, 22, 27 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817, 820, 821, 826, 841a); secs. 6, 8, 9, 10, 11, 12, 14, 15, 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1705, 1707–1711, 1713–1716); sec. 204(b) of the Merchant Marine Act, 1936 (46 U.S.C. app. 1114(b)); and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Section 502.92 is amended by revising paragraphs (a) (1), (2), (3)(i), and (c) to read as follows:

§ 502.92 Special docket applications and fee.

(a)(1) A common carrier by water in foreign commerce, or a shipper, may file an application for permission to refund or waive collection of a portion of freight charges where it appears that there is (i) an error in the tariff of a clerical of administrative nature or (ii) an error due to inadvertence in failing to file a new tariff. Such refund or waiver must not result in discrimination among shippers, ports, or carriers.

(2) When the application is filed by a carrier, the Commission must have received prior to the filing of the application a new tariff which sets forth the rate on which refund or waiver would be based.

(3)(i) The application for refund or waiver must be filed with the Commission within one hundred eighty (180) days from the date of shipment and served upon other persons involved pursuant to Subpart H of this part. When a rate published in a conference tariff is involved, the carrier or shipper must serve a copy of the application on the conference and so certify in accordance with Rule 117 (46 CFR 502.117) to that service in the application. A shipper must also make a similar service and certification with respect to the common carrier. An application is filed when it is placed in the mail, delivered to a courier, or, if delivered by another method, when it is received by the Commission. Filings by mail or courier must include a certification as to date of mailing or delivery to the courier.

* * * * *

(c) Applications under paragraphs (a) and (b) of this section shall be submitted in an original and three (3) copies to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573–0001. Each application shall be acknowledged with a reference to the assigned docket number and referred to the Office of Administrative Law Judges. The presiding Administrative Law Judge may, in his or her discretion, require the submission of additional information or oral testimony. Formal proceedings as described in other rules of this part need not be conducted. If the application is granted, the initial decision shall describe the content of the appropriate notice if required to be published, and shall designate the tariff in which it is to appear, or other steps that are required to be taken which give notice of the rate on which such refund or waiver is to be based. The presiding Administrative Law Judge shall issue an initial decision to which the provisions of § 502.227 shall be applicable. [Rule 92].

3. Exhibit No. 1 to Subpart F is amended to remove the reference to "conference" in the introductory paragraph.

4. The requirement for an "Affidavit of Carrier(s) and/or Conference" is amended by removing "and/or Conference" and the language in brackets is amended by removing everything after the word "rate."

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–8059 Filed 4–13–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, and 179

[Docket No. 181, Notice No. 87–4]

Performance-Oriented Packaging Standards; Miscellaneous Proposals; Reopening of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On May 5, 1987, RSPA published a notice of proposed rulemaking (NPRM) (Docket No. HM–181; Notice No. 87–4) in the **Federal Register** (52 FR 16482) concerning performance-oriented packaging standards. On November 6, 1987, RSPA published a supplemental NPRM (52 FR 42772) containing corrections to the initial NPRM and additional proposals. An extension of the comment period from November 2, 1987 to February 26, 1988 was published in the **Federal Register** (52 FR 33906) on September 8, 1987, due to the pending supplemental NPRM and in response to several requests for additional time to submit comments. Due to the size and scope of Notice No. 87–4, several commenters have again indicated that additional time is needed to fully develop their responses to specific proposals. The areas addressed by these commenters included proposed bulk packaging provisions, reclassification of certain materials such as anhydrous ammonia, and non-bulk packaging requirements for poisonous liquids which are toxic by inhalation. RSPA believes that reopening the comment period is consistent with the public interest and, by this notice, is reopening the comment period for Notice No. 87–4 from February 26, 1988 to May 25, 1988.

DATE: Comments must be received on or before May 25, 1988.

ADDRESS: Address comments to the Dockets Unit, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The

Dockets Unit is located in Room 8426 of the Nassif Building, 400 7th Street SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m., and 5:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Ann Boylan, Standards Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, telephone (202) 366–4488.

Issued in Washington, DC, on April 8, 1988, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88–8214 Filed 4–13–88; 8:45 am]

BILLING CODE 4910–60–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1185

[Ex Parte No. 474]

Certain Interlocking Directorates; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking—exemption.

SUMMARY: The Commission proposes to exempt individuals from the prior approval requirements of 49 U.S.C. 11322(a) when they seek to assume positions as officers or directors of one rail carrier while holding the position of officer or director of another rail carrier, except where both carriers are class I railroads. The Commission believes that the prior approval requirements for this type of transaction are no longer necessary to carry out the national rail transportation policy of 49 U.S.C. 10101a, that these transactions are of limited scope, and that regulation is not necessary to protect shippers from abuse of market power. This action is being proposed to eliminate unwarranted government regulation and the accompanying delay. To accomplish this, the regulations at 49 CFR Part 1185 would be revised and a new § 1185.1, *Scope of exemption,* would be added, as set forth below. Comments are invited on the proposed exemption, as well as on expanding it to encompass interlocking directorates involving two class I railroads.

DATES: An original and 10 copies of comments must be filed by May 16, 1988.

ADDRESS: Comments referring to Ex Parte No. 474 should be addressed to: Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245. [TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721).

This action will not significantly affect either the quality of the human environment or energy conservation.

Regulatory Flexibility Analysis

The Commission certifies that the proposed exemption, if promulated, will not have a significant impact on a substantial number of small entities, because the proposal would merely remove prior approval requirements for individuals in certain circumstances to hold the position of officer or director of more than one carrier. The proposed exemption may have some positive impact on small carriers since it will remove a regulatory barrier to qualified individuals becoming officers or directors of those entities.

List of Subjects in 49 CFR Part 1185:

Administrative practice and procedure, Antitrust, Railroads.

Decided: April 7, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

Title 49, Subtitle B, Chapter X, Part 1185 of the Code of Federal Regulations is proposed to be revised as follows:

PART 1185—INTERLOCKING OFFICERS

1. The authority citation for 49 CFR Part 1185 would be revised to read as follows.

Authority: 49 U.S.C 10321, 11322, and 10505; 5 U.S.C. 553 and 559.

§§ 1851.1–1185.10 [Redesignated as §§ 1185.2–1185.11]

2. Sections 1185.1–1185.10 would be redesignated as §§ 1185.2—1185.11 respectively.

3. Section 1185.1 would be added to read as follows:

§ 1185.1 Scope of exemption.

(a) Subject to the exception in paragraph (c) of this section, "interlocking directorates," as defined in paragraph (b) of this section, are exempt from the prior approval requirements of 49 U.S.C. 1132(a).

(b) An "interlocking directorate" exists whenever an individual holds the position of officer (as defined in § 1185.3) or director of one carrier and assumes the position of officer or director of another carrier.

(c) The exemption in paragraph (a) of this section does not apply to those interlocking directorates sought where the carriers are class I railroads. An application under 49 U.S.C. 11322(a) or petition for exemption under 49 U.S.C. 10505 for authority for this type of interlocking arrangement must be filed.

(d) This exemption does not affect the competitive bidding requirements of Section 10 of the Clayton Act (15 U.S.C. 20), as implemented in part in 49 CFR Part 1010.

4. Newly redesignated § 1185.3 would be revised to read as follows:

§ 1185.3 Application of regulations.

The regulations in this part apply to any person authorized by or undertaking for each of two or more class I rail carriers to perform the duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land and tax agent, or chief purchasing agent of a carrier.

[FR Doc. 88–8173 Filed 4–13–88; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 53, No. 72
Thursday, April 14, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Agency Nonacquiescence in Decisions of the Courts of Appeals

AGENCY: Administrative Conference of the United States.

ACTION: Committee on Judicial Review; Request for Public Comments.

SUMMARY: The Administrative Conference's Committee on Judicial Review has under consideration a draft recommendation on federal agency nonacquiescence in decisions of courts of appeals. Interested persons are invited to comment on the draft recommendations.

DATES: Please submit comments by May 4, 1988.

ADDRESS: Send comments to Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Judicial Review has under consideration a draft recommendation on federal agency nonacquiescence in decisions of courts of appeals reviewing agency action. The proposed recommendation is based on a draft report prepared by Professors Samuel Estreicher and Richard Revesz of New York University School of Law. The text of the draft recommendation is printed in full below. Copies of the draft report are available from the Office of the Chairman of the Administrative Conference.

The draft recommendation identifies and defines three types of nonacquiescence: intercircuit nonacquiescence, intracircuit nonacquiescence, and nonacquiescence where the venue for circuit court review of agency action is uncertain. The proposal recommends that agencies not engage in intracircuit nonacquiescence (refusal to follow the case law of a particular court of appeals when the agency action will be reviewable in the same court of appeals) unless certain specified requirements are met. The draft recommendation also suggests that agencies establish procedures for making intracircuit nonacquiescence decisions and for communicating those decisions within the agency and to the public. In addition, it urges courts not to enjoin an agency from pursuing a policy of intercircuit nonacquiescence or of nonacquiescence where venue is uncertain, and to enjoin an agency from engaging in intracircuit nonacquiescence only if the requirements set out in the recommendation have not been met. Since nonacquiescence sometimes occurs because venue is uncertain, the draft proposal recommends that Congress eliminate venue uncertainty except where overriding considerations counsel otherwise.

The Conference's Committee on Judicial Review tentatively plans to meet in early May for further consideration of the draft recommendation in the light of any comments that are received. At that time, the committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Session scheduled for June 9 and 10, 1988. Comments should be sent to the address given above.

Draft Recommendation: Agency Nonacquiescence in Decisions of the Courts of Appeals

From time to time, federal administrative agencies such as the National Labor Relations Board, the Internal Revenue Service, and the Department of Health and Human Services have practiced "nonacquiescence"—the selective refusal to conduct their internal proceedings in conformity with adverse rulings of the courts of appeals. Believing that they are responsible for a nationally uniform, expert administration of the statutes committed by Congress to their charge, these agencies have, in varying degrees, insisted on the authority to pursue their policies despite contrary circuit court decisions, until the Supreme Court issue a nationally binding resolution. This practice has provoked increasing criticism in recent years, particularly from the courts of appeals.

The term "nonacquiescence" actually refers to three distinct types of agency behavior. First, an agency engages in intercircuit nonacquiescence when it refuses to follow, in its administrative proceedings, the case law of one court of appeals when, under applicable venue provisions, review of the agency's action will lie in a different court of appeals. Second, an agency engages in intracircuit nonacquiescence when the relevant venue provisions establish that review will be to a particular court of appeals and the agency refuses to follow the case law of that circuit. The third category involves cases in which the proper venue for review of agency action is uncertain. Here, the agency refuses to follow the case law of a court of appeals but is not certain whether its decision will be reviewed in that court or in one that has not rejected the agency's position. This category includes cases in which, as a practical matter, it is probable that the case will be heard in one particular circuit, as long as venue in another circuit that has not rejected the agency's position is possible under the applicable statutory provisions.

Intercircuit nonacquiescence is necessary to preserve dialogue among the courts of appeals; such dialogue is likely to produce a more careful and focused consideration of the relevant issues in those courts, as well as to aid the Supreme Court by presenting it with competing approaches to difficult questions. Similar reasons underlie the rejection of intercircuit *star decisis* and of nonmutual collateral estoppel against the government. This recommendation therefore does not seek to limit an agency's exercise of intercircuit nonacquiescence.

Intracircuit nonacquiescence, in contrast, can have negative effects by giving rise to conflicts between an agency and its reviewing court, by creating disuniformity because a more favorable rule is available to parties that seek judicial review, by disadvantaging parties with limited resources for litigation, and by increasing the workload of the federal

courts. At the same time, however, a complete bar against intracircuit nonacquiescence would be inappropriate, as it would constrain intracircuit dialogue, undermine congressional policies in favor of national uniformity, and interfere with the efficient administration of federal law. This recommendation lists the factors that should govern the legitimacy of intracircuit nonacquiescence and sets procedural safeguards for the exercise of such nonacquiescence.

As to the third category, limits on nonacquiescence are undesirable for the same reasons as are limits on intercircuit nonacquiescence; this recommendation therefore does not seek to constrain an agency's ability to engage in nonacquiescence where venue is uncertain. But uncertainty over venue negatively affects an agency's relitigation policy by hampering the agency's ability to press its position in circuits that have not rejected it without having that position challenged in circuits that have rejected it. In addition, venue uncertainty is largely the product of historical happenstance rather than of reasoned choice and in many cases does not produce compelling benefits. For these reasons, this recommendation advocates limitations on venue choice except where overriding considerations (such as the desirability of preserving the specialized role of the United States Court of Appeals for the District of Columbia Circuit) counsel otherwise. *Cf.* ACUS Recommendation 82-3, *Federal Venue Provisions Applicable to Suits Against the Government*, 1 CFR 305.82-3. In order to reduce the agency-court friction caused by intracircuit nonacquiescence, Congress should make clear that by limiting venue choice is not thereby prohibiting nonacquiescence conducted in accordance with this recommendation.

Recommendation

1. Agencies should not engage in intracircuit nonacquiescence unless: (a) the agency has responsibility for securing a nationally uniform policy with respct to the question that was the subject of the adverse judicial decision; (b) the agency is reasonably seeking the vandication of its position both in the courts of appeals and before the Supreme Court, or through the active pursuit of legislative change; and (c) there is a justifiable basis for belief that the agency's position falls within the scope of its delegated discretion. An agency's position does not lack a justifiable basis simply because it was previously rejected by the court of appeals that issued the decision in which the agency does not acquiesce, such a basis is lacking only if no other court of appeals is likely to accept the agency's position.

2. Courts should not impose sanctions on an agency for, or enjoin an agency from, engaging in intracircuit nonacquiescence unless the rquirements in paragraph 1 above have been met. Such measures are inappropriate for intracircuit nonacquiescence and for nonacquiescence where venue is uncertain.

3. Agencies should establish procedures for identifying decisions of the courts of appeals that are contrary to their policies, for making determinations about when to engage in intracircuit nonacquiescence, and for communicating those detrminations to responsible agency personnel such as administrative law judges and enforcement staff. Decisions to engage in intracircuit nonacquiescence should be widely disseminated to the public and to relevant governmental officials, and should be accompanied by a brief statement of reasons. Among the factors that an agency should address in such a statement are the importance of the issue to its programmatic objectives, the strength of the congressional interest in a nationally uniform approach on the issue, the difficulty of differential administration of agency policy, and the fairness of having a favorable outcome in the circuit available only to those parties with sufficient resources to pursue an appeal.

4. Congress should eliminate uncertainty over the proper venue for review of agency action by establishing predictable venue rules unless overriding considerations, such as the desirability of preserving the specialized role of the United States Court of Appeals for the District of Columbia Circuit, counsel otherwise. In limiting venue choice, Congress should make clear that it is not thereby prohibiting agencies from engaging in intracircuit nonacquiescence in accordance with this recommendation.

Dated: April 11, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88-8243 Filed 4-13-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Finding of No Significant Imact for Pecos Arroyo Watershed, Site 1, Repairs to Dam San Miguel County, NM

Introduction

The San Jon Flood Prevention Measure is a federally-assisted action authorized for planning under Pub. L. 83-566, Watershed Protection and Flood Prevention. An environmental assessment was prepared in conjunction with the development of the project plan. The assessment is available for public review at:

Soil Conservation Service, 517 Gold Avenue SW., Rm. 3301, Albuquerque, NM 87102.

Recommended Action

A liner will be placed inside the principal outlet conduct and sediments will be excavated from the outlet channel on a structure built in 1964.

The proposed work will prolong the useful life of the structure.

Alternatives

Planning included the analysis of no action, complete removal and replacement of the principal outlet conduct, and the selected alternative.

Conclusion

In consideration of the findings of the environmental assessment, it is determined that environmental impacts will be positive and confined to the treatment areas. The proposed treatments will meet CEQ, USDA, and SCS policies regarding environmental concerns.

Therefore, based upon the above findings, I have determined that an environmental impact statement is not required.

Date: April 6, 1988.

Ronald L. Lauster,

Acting State Conservationist.

[FR Doc. 88-8177 Filed 4-13-88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Consultation/Hearing on Civil Rights Aspects of Public Health Policies and Initiatives to Control AIDS

Notice is hereby given pursuant to the provisions of the United States

Commission on Civil Rights Act of 1983, Pub. L. 98–183, 97 Stat. 1304, that a public consultation/hearing before the U.S. Commission on Civil Rights will be held on May 16, 17, and 18, 1988, beginning each day at 9:00 a.m., at the Departmental Auditorium of the Department of Health and Human Services, North Building, 330 Independence Avenue, SW., Washington, DC 20201.

The purpose of the consultation/hearing is to receive testimony about civil rights issues in relation to public health policies and initiatives to control AIDS.

The Commission is an independent, bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal government, and to study and collect information concerning legal developments, with respect to discrimination or denials of equal protection of the laws under the Constitution because of color, race, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, DC, April 11, 1988.

Clarence M. Pendleton, Jr.,

Chairman.

[FR Doc. 88–8153 Filed 4–13–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 377]

Approach for Expansion of Foreign-Trade Zone No. 66, Wilmington, North Carolina, Within the Wilmington Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the North Carolina Department of Commerce, Grantee of Foreign-Trade Zone No. 66, Wilmington, North Carolina, has applied to the Board for authority to expand its general-purpose zone to include the entire Wilmington port terminal complex (390 acres), within the Wilmington Customs port of entry;

Whereas, the application was filed on July 18, 1986, and notice inviting public comment was given in the **Federal Register** on July 30, 1986 (Docket No. 25–86, 51 FR 27232);

Whereas, an examiner's committee has investigated the application in accordance with the Board's regulations and recommends approval based on a finding that the expansion would improve zone services in the Wilmington area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed July 18, 1986. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC this 7th day of April, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

John J. Da Ponte,

Executive Secretary.

[FR Doc. 88–8216 Filed 4–13–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 30 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–262R. *Applicant:* University of Alaska, Petroleum Development Laboratory, 437 Duckerring Building, Fairbanks, AK 99775–1260. *Instruments:* JEFRI High Pressure Recombination Apparatus and High Temperature High Pressure Miscibility Apparatus. *Manufacturer:* D. B. Robinson & Associates, Canada. Original notice of this resubmitted application was published in the **Federal Register** of August 31, 1987.

Docket Number: 88–024R. *Applicant:* Virginia Polytechnic Institute and State University, Physics Department, Robeson Hall, Blacksburg, VA 24061. *Instrument:* FTI Interferometer, DA3.16. *Manufacturer:* Bomem, Canada. Original notice of this resubmitted application was published in the **Federal Register** of December 9, 1987.

Docket Number: 88–103. *Applicant:* University of Louisville, Department of Anatomy, Louisville, KY 40292. *Instrument:* Electron Microscope, Model CM10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for high resolution ultrastructural studies of biological materials. Specific projects will involve studies of the following:

(1) Membrane changes associated with the decrease in pump site density on dysfunctional corneal endothelium,

(2) The role of individual molecules as differentiation mediators to understand the mechanisms of action, and

(3) Studies on the distribution of ultrastructural components during neuronal development focus on changes in microtubular distribution during cell division.

In most of the ongoing studies the major objectives are to determine the structure function relationships of cellular mechanisms. The instrument will also be used for training graduate and medical students in electron microscope techniques. *Application Received by Commissioner of Customs:* February 16, 1988.

Docket Number: 88–104. *Applicant:* The University of Illinois, 506 S. Wright Street, Urbana, IL 61801. *Instrument:* Electron Microscope with Accessories, Model CM12/STEM. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used in rapid solidification processing of metals and alloys and characterization of the resulting refined microstructures. The other area of research involves studies of layered superlattices of electronic materials. *Application Received By Commissioner of Customs:* February 16, 1988.

Docket Number: 88–105. APPLICANT: University of Colorado, Health Sciences Center, Division of Hematology, Campus Box B170, 4200 E. 9th Ave., Denver, CO 80262. *Instrument:* Gas Chromatograph/Mass Spectrometer Model TS–250.

Manufacturer: VG Tritech, United Kingdom. *Intended use*: The instrument will be used for the study of a number of cobalamin and folate analogues, samples of animal and human blood, cerebrospinal fluid, urine, tissues, feces, and various chemicals or metabolites, such as methylmalonic acid and homocysteine, that are involved in biochemical pathways involving cobalamin and/or folic acid. Experiments will be conducted to learn more about the structure, function, and levels of various cobalamin and folate analogues and related metabolites in animals and humans under various conditions. *Application Received by Commissioner of Customs*: February 18, 1988.

Docket Number: 88-106. *Applicant*: Nathan Kline Institute, Orangeburg, NY 10962. *Instrument*: Electron Microscope, Model CM10/PC. *Manufacturer*: N.V. Philips, The Netherlands. *Intended use*: The instrument will be used for studies of biological tissues in order to understand the basic mechanisms determining and regulating (1) the structure and function of a particular subcellular structure called the peroxisome which is instrumental in lipid metabolism and the failure of which is correlated with neurologic disease and (2) the function of membrane components involved in membrane recycling to elucidate the mechanisms of membrane assembly, the breakdown of which leads to neurological dysfunction. *Application Received by Commissioner of Customs:* February 18, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-8217 Filed 4-13-88; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on B-1B Defensive Avionics; Closed Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on B-1B Defensive Avionics will meet in closed session on May 13, 1988 at Eaton, AIL Division, Deer Park, New York.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the status of the Air Force B-1B Defensive Avionics Program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 11, 1988.

[FR Doc. 88-8219 Filed 4-13-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Tactical Directed Energy Weapons—Revisit; Cancelled Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Tactical Directed Energy Weapons—Revisit for March 30, 1988 as published in the **Federal Register** (Vol. 53, No. 45, Page 7387, Tuesday, March 8, 1988, FR Doc. 88-5057.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 11, 1988.

[FR Doc. 88-8220 Filed 4-13-88; 8:45 am]

BILLING CODE 8310-01-M

Corps of Engineers, Department of the Army

Intention To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Local Flood Protection Projects; Sandusky River, Ohio

AGENCY: U.S. Army Corps of Engineers, Buffalo District, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. *Proposed Action:* The proposed action would alleviate flood damages along the Sandusky River in the cities of Bucyrus in Crawford County and Tiffin in Seneca County, Ohio. The following alternative plans will be evaluated for the city of Bucyrus:

a. *Plan 3 (Bridge Clean-Out and Ring Levee).* A ring-shaped levee would be constructed north of the river surrounding both sides of North Sandusky Avenue at East River Street. In addition, shoals under the Mansfield Street bridge would be cleared, and bank improvements would be made.

b. *Plan 4 (Bridge Clean-Out Only).* Shoals under the Mansfield Street bridge would be cleared, and bank improvements would be made.

c. *Plan 7 (Floodproofing).* Thrity-three houses north of the river on North Lane, and Clinton and Water Streets would be raised above or near the 100-year floodplain level.

The following plans will be evaluated for the city of Tiffin:

a. *Plan 2 (Levee—Duchess Lane Area).* This plan would consist of constructing a levee around the floodprone portions of Duchess Lane (i.e., those portions nearest the river) and a floodwall along the tributary nearest intersection of U.S. Route 224 and State Route 53.

b. *Plan 8 (Floodproofing—Mechanicsburg Area).* Ninety-one houses in the Mechanicsburg area would be raised above or near the 100-year floodplain level. The streets included would be: Martha, Union, Front, Charlotte, Russell, Second, and Third.

c. *Plan 9 (Floodproofing—Duchess Lane Area).* Twenty-nine houses in the Duchess Lane area would be raised above or near the 100-year floodplain level. The streets included would be: Duchess Lane, South Duchess Lane, and Riverside Park Lane.

2. *Scoping Process:* Scoping for the DEIS will include continued coordination with affected Federal, State, and local agencies, as well as other interested parties. Formal scoping meetings are not planned at this time, however, all interested parties are urged to actively participate in the study by submitting in writing any concerns or recommendations to the Buffalo District.

Significant issues to be addressed in the DEIS include, but are not limited to fish and wildlife habitat, water quality, recreation, aesthetic values, cultural resources, health and safety, community growth and cohesion, and public facilities and services. A Draft Fish and Wildlife Coordination Act Report will be completed by the Columbus Field Office of the U.S. Fish and Wildlife Service in August 1988. A Cultural Resources Reconnaissance of the study area will also be completed.

3. *Availability:* The DEIS is expected to be available for public and agency review in March/April 1989.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. William E. Butler, Environmental Analysis Branch, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, NY 14207-3199.

Dated: April 5, 1988.

Bruce W. Haigh

Lieutenant Colonel, U.S. Army, Acting Commander.

[FR Doc. 88-8128 Filed 4-13-88; 8:45 am]

BILLING CODE 3710-GP-M

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DEIS) for Operation and Maintenance of Coralville Lake, Iowa River, Johnson County, IA

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY:

1. Description of Proposed Action

A draft SEIS will be prepared to present information on the effects resulting from changes in the Regulation Manual and Water Control Plan for Coralville Lake. Information will be presented to supplement the original Environmental Impact Statement (EIS) prepared in 1977. The Coralville Lake project encompasses 24,332 acres of fee title land and 5,136 acres of flowage easement land in Johnson County, Iowa. The project, completed in 1958, was built for flood control and low-flow augmentation (conservation storage). Fish and Wildlife receive equal consideration to other authorized project purposes, as provided by the Fish and Wildlife Coordination Act of 1958. Recreation, as a project purpose, is authorized by the Flood Control Act of 1944. Changes in the conservation pool are required to account for the conservation storage lost as a result of sedimentation.

2. Alternatives for the Proposed Action

Preliminary estimates indicate that a conservation pool elevation of about 686 feet National Geodetic Vertical Datum (NGVD) may be required to ensure adequate storage (90 to 95 percent reliability) for low-flow or drought events. In anticipation of a change in pool elevation, certain changes in the regulation, operation, and maintenance of the Coralville Lake project will be necessary. At this time, alternative development has centered around the target elevation of 686 NGVD with varying seasonal elevations. The concept of variable seasonal pool elevations was provided during a project initiation meeting involving the Corps and agency representatives with direct management responsibilities on project lands. While not specifically required by Corps regulation in the case of an EIS supplement, this meeting aided the process of scoping in preliminary alternative development; agency staff highlighted concerns for adequate flood control, public safety, fisheries, wildlife, and recreation. The development of the SEIS will be used to analyze alternatives to the current regulation plan in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA regulations (40 CFR Parts 1500–1508, 33 CFR Parts 230 and 325), and other appropriate Federal regulations. The final SEIS will accompany a decision document identifying the preferred regulation plan.

3. Public Involvement

A public information paper was distributed on 29 January 1988, to solicit public input concerning alteration of the conservation pool and lake outflows. A press release also was issued in conjunction with the information paper. This notice further solicits input and assistance from the interested public and invites participation by affected Federal and State agencies having special jurisdiction and/or expertise as cooperating agencies. Public meeting(s) will be scheduled following circulation of the Draft SEIS, currently planned for December 1988. Locations and dates of any scheduled meeting(s) will be announced approximately 30 days in advance by area press release.

4. Significant Issues to be Addressed

Impacts to natural, social, economic and cultural resources resulting from a change in reservoir regulation will be addressed. Portions of the reservoir pool area to be inundated are managed for wildlife by the State of Iowa, under license for fish and wildlife management pursuant to the General Plan. Changes in flood frequencies and durations are also issues to be addressed.

5. Public Availability

The final SEIS is anticipated to be completed by May 1989.

Additional information concerning the proposed project may be requested from: District Engineer, U.S. Army Engineer District, Rock Island. ATTN: Planning Division, Clock Tower Building—P.O. Box 2004, Rock Island, Illinois 61204–2004.

Date: March 30, 1988.

Donald J. Hejna,

LTC, EN, Acting Commander.

[FR Doc. 88-8142 Filed 4-13-88; 8:45 am]

BILLING CODE 3710-HV-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.122B]

Notice Inviting Applications for New Awards under the Secretary's Discretionary Program for Fiscal Year 1988

Purpose: To invite applications to conduct national school volunteer programs.

Deadline for Transmittal of Applications: June 17, 1988.

Applications Available: April 21, 1988.

Available Funds: $383,000.

Estimated Range of Awards: $100,000–$383,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 1–3.

Project Period: 12 Months.

Applicable Regulations: (a) The Secretary's Discretionary Program Regulations, 34 CFR Part 760; and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Absolute Priority: Title III of Pub. L. 100–202, which provides for continuing appropriations for fiscal year 1988, specifies that $383,000 of the funds appropriated for the Secretary's Discretionary Program shall be used for national school volunteer programs. In accordance with Pub. L. 100–202, and 34 CFR 75.105(b) and (c)(3), only applications proposing to conduct national school volunteer programs will be considered under this competition.

Within this absolute priority, the Secretary is particularly interested in applications to expand the number and strengthen the quality or organized school volunteer activities.

The Secretary encourages applications that provide training activities to establish or strengthen school volunteer programs in the States; develop improved training materials for school volunteers; and strengthen the nationwide network of school programs. However, these examples are only suggestions. Applicants are encouraged to propose activities other than these examples.

For Applications or Information Contact: The Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue SW., Room 4132, Washington, DC 20202. Telephone (202) 732-3566.

Program Authority: 20 U.S.C. 3851.

Dated: April 8, 1988.

Henry L. Curry,

Acting Assistant Secretary.

[FR Doc. 88-8218 Filed 4-13-88; 8:45 am]

BILLING CODE 4000-01-M

National Advisory board on International Education Programs; Open Meeting

AGENCY: National Advisory Board on International Education Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

Date: April 19, 1988.

Location: The Hyatt-Arlington Hotel, 1325 Wilson Boulevard, Arlington, Virginia 22209, Telephone: 703–525–1234.

FOR FURTHER INFORMATION CONTACT: Harry M. Gardner, Executive Director, NABIEP, Postsecondary Relations Staff, 7th & D Streets SW., Room 4907, Washington, DC 20202, Telephone: 202–732–1862.

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended by the Education Amendments of 1986 (Pub. L. 99–498; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public.

The agenda includes: Update on Grants and the Center for International Education Programs; Continuation of Discussion Concerning the Federal Role in International Education; and General Board Business for 1988.

Records are kept on the Board's proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8 a.m. to 4 p.m., ROB–3, 7th & D Streets SW., Roomn 4907, Washington, DC.

Signed in Washington, DC on April 11, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–8187 Filed 4–13–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Atomic Energy

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Addtiional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer:

RTD/EU(JA)–111, for the transfer from Japan to Kernforschungsanlage Juelich GmbH, the Federal Republic of Germany, 3 fission counters containing 0.03 grams of uranium enriched to 93.16 percent in the isotope uranium-235, for use in neutron flux measurements for study of instrumentation in high temperature gas cooled reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: April 11, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary For International Affairs and Energy Emergencies.

[FR Doc. 88–8207 Filed 4–13–88; 8:45 am]

BILLING CODE 6450–01–M

Disposal of Hanford Defense High-Level, Transuranic, and Tank Wastes, Hanford Site, Richland, Washington; Record of Decision (ROD)

This Record of Decision has been prepared pursuant to the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR Parts 1500–1508) and the Department of Energy NEPA Guidelines (52 FR 47662, December 15, 1987). It is based on DOE's "Environmental Impact Statement for the Disposal of Hanford Defense High-Level, Transuranic, and Tank Wastes" (DOE/EIS–0113) and consideration of all public and agency comments received on the Environmental Impact Statement (EIS).

Decision

The decision is to implement the "Preferred Alternative" as discussed on DOE/EIS–0113 (hereafter referred to as the HDW–EIS). The Department of Energy (DOE) has decided to proceed with disposal activities for the following defense wastes at the Hanford Site: double-shell tank wastes, retrievably stored and newly generated transuranic (TRU) waste, the only pre-1970 buried suspect TRU-contaminated solid waste site outside the central (200 Area) plateau, and strontium and cesium encapsulated wastes.

To process existing and future wastes from the double-shell storage tanks at Hanford for final disposal, the DOE will design, construct, and operate the Hanford Waste Vitrification Plant (HWVP); complete the necessary pretreatment modifications and operate the pretreatment facility, currently planned to be the Hanford B-Plant; and utilize the Hanford Transportable Grout Facility. The radioactive high-level waste fraction will be processed into a borosilicate glass waste form and stored at the HWVP until a geologic repository is built and ready to receive this waste. The low-activity fraction will be solidified as a cement-based grout and disposed of near surface at Hanford in preconstructed, lined concrete vaults. Existing and future double-shell tank waste will be characterized for hazardous chemical constituents, as well as other chemical constituents that might affect glass or grout formulation, before processing.

A facility will be designed, constructed and operated at Hanford to sort, process and repackage retrievably stored and newly generated TRU solid waste for shipment to the Waste Isolation Pilot Plant (WIPP) located approximately 26 miles from Carlsbad, New Mexico. The only pre-1970 buried suspect TRU-contaminated solid waste site outside the central (200 Area) plateau will be removed to the 200 Area plateau for processing for disposal as solid TRU waste.

Encapsulated cesium and strontium wastes will continue to be stored safely until such time as a geologic repository is ready to receive this waste for disposal. Prior to shipment to a geologic repository, these wastes will be packaged in accordance with repository waste acceptance specifications.

For the remainder of the waste classes covered in the HDW-EIS (single-shell tank wastes, TRU-contaminated soil sites and pre-1970 buried suspect TRU-contaminated solid waste within the 200 Area plateau), the DOE has decided to conduct additional development and evaluation before making decisions on final disposal. This development and evaluation effort will focus both on methods to retrieve and process these wastes for disposal as well as to stabilize and isolate the wastes near surface. Results from this work will be publicly available. Prior to decisions on final disposal of these wastes, the alternatives will be analyzed in subsequent environmental documentation, including a supplement to the HDW-EIS for decisions on disposal of the single-shell tank wastes.

Background

The Hanford Site, near Richland, Washington, is a DOE installation involved in production of nuclear materials for the national defense of this country, defense nuclear waste management, research and development and related activities. In 1943, the U.S. Army Corps of Engineers selected the area, encompassing about 600 square miles, to build the first plutonium production reactors and processing facilities to assist in ending World War II. This site has been dedicated ever since to the production of national defense nuclear materials, to research, and to defense nuclear waste management activities.

The Hanford production and interim waste management operations have resulted in a number of different types of waste. These include:

- Single-shell and double-shell tank wastes in the form of sludge, slurry, saltcake, and liquid.
- Encapsulated cesium and strontium.
- Solid wastes in drums and burial boxes.
- Contaminated soils and sediments from liquid effluents disposed of in cribs, ponds, and ditches.

The HDW-EIS addresses high-level, TRU, and a third category of wastes called tank wastes. Low-level wastes specifically resulting from processing high-level, TRU, or tank wastes for final disposal are also covered in the HDW-EIS. High-level waste has relatively high radioactivity and requires long-term isolation. TRU waste consists of wastes contaminated to greater than 100 nCi/gm with elements that have atomic numbers greater than that of uranium; for example, certain isotopes of neptunium, plutonium, americium, and curium. These radionuclides are very long-lived, so TRU waste also requires long-term isolation. TRU-contaminated solid wastes were either buried with low-level waste before 1970 or retrievably stored on storage pads after 1970.

Intermixed with the radioactive wastes in the tanks are nonradioactive chemicals, some of which are considered hazardous. The use of tanks to store radioactive waste generated by the operation of processing plants began with the nuclear defense program in the 1940's. Until the early 1970's most of the processing wastes at Hanford were stored in underground, concrete encased, single-shell steel tanks. Since 1970, newly generated processing wastes have been stored in underground, concrete encased, double-shell steel tanks; and by 1981 most of the liquid wastes in single-shell tanks were removed and placed in double-shell tanks. Tank wastes, which come from a number of sources at Hanford, have been processed and transferred among tanks resulting in significant changes in the waste characteristics. Some strontium and cesium (removed from single-shell tanks to remove heat generating radionuclides) were solidified, sealed in capsules, and are presently stored in water basins or leased for beneficial use.

Interim waste management operations were evaluated in the "Final Environmental Statement—Waste Management Operations, Hanford Reservation, Richland, WA" (ERDA-1538, 1975) and DOE/EIS-0063, "Supplement to ERDA-1538" (1980). In addition, the National Academy of Sciences' Committee on Radioactive Waste Management evaluated present operations in "Radioactive Wastes at the Hanford Reservation—A Technical Review" (1978). These documents concluded that interim operations were being carried out in a safe and responsible manner, but that the DOE should move ahead with the final disposal of Hanford wastes. In 1977, a report was prepared on "Alternatives for Long-Term Management of Defense High-Level Radioactive Waste, Hanford Reservation" (ERDA-77-44). This document, along with several follow-on documents, established the basis for the alternatives evaluated in the Draft HDW-EIS.

The Notice of Intent (NOI) to prepare the HDW-EIS was published in the **Federal Register** at 48 FR 14029 (April 1, 1983). The Draft HDW-EIS was issued for a 120-day public review period starting April 11, 1986, and ending August 9, 1986. Approximately 1,450 copies of the Draft HDW-EIS were distributed. In addition, the DOE sponsored seven general public open houses in the Pacific Northwest in February 1986, and seven information workshops in May and June 1986 to introduce the HDW-EIS. Four public hearings were held in July 1986 to obtain comments. In addition, 243 comment letters were received which contained approximately 2,000 individual comments. After reviewing and incorporating these public and agency comments, as well as a review of previously completed analyses, the Preferred Alternative described in the Final HDW-EIS was developed. The Final HDW-EIS was issued on December 18, 1987, and a Notice of Availability was published in the **Federal Register** at 52 FR 49504 (December 31, 1987).

Actions to implement this decision will comply with all applicable Federal, State and local statutes, regulations, standards, and permit requirements.

Description of Alternatives Considered

As described in the HDW-EIS, a number of alternatives were considered for disposing of Hanford defense high-level, TRU, and tank wastes. The three disposal alternatives evaluated in the Draft HDW-EIS were:

- Geologic Disposal of most of the wastes (98 percent of the radioactivity).
- In-Place Stabilization and Disposal of all wastes.
- Reference Alternative that combines features of both the Geologic Disposal and In-Place Stabilization and Disposal alternatives.

In addition, a No Disposal Action Alternative, continuation of present storage programs for wastes, was analyzed in accordance with the Council on Environmental Quality NEPA regulations.

A Preferred Alternative was developed after review of public and agency comments on the Draft HDW-EIS. This alternative consists of proceeding with disposal actions described in the Reference Alternative for some waste classes but deferral of disposal decisions for three other waste classes until additional development and evaluation are completed. The impacts of this alternative are analyzed in the Final HDW-EIS.

Geologic Disposal Alternative

The Geologic Disposal Alternative involves retrieval, segregation, processing, packaging, transportation, and placement of most (98 percent by radioactivity) of Hanford's defense high

level, TRU, and tank wastes in geologic repositories.

For the high-level waste repository, two hypothetical locations were evaluated. One was assumed to be at the Hanford Site and the second at an unspecified location somewhere in the United States, about 3,000 miles from the Hanford Site. This latter repository location was chosen to bound all reasonable distances and, therefore, to bound possible impacts of shipping wastes to an offsite repository. For calculational purposes, all transuranic wastes were assumed to be shipped to the WIPP site in New Mexico for disposal.

Under this alternative, existing and future wastes from both single-shell and double-shell tanks would be separated into two fractions. The high-level fraction, containing the majority of the strontium-90, cesium-137, plutonium-239, technetium-99, and other radionuclides, would be made into a borosilicate glass, packaged in suitable canisters and transported to a geologic repository for disposal. The bulk of the remaining tank waste, containing small quantities of carbon-14, iodine-129, and other radionuclides, is comparable to commercial Class C (low-level) waste as defined by the Nuclear Regulatory Commission and would be made into a cement-based grout and disposed of in near-surface vaults on the Hanford Site. A protective barrier would be placed over these near-surface vaults and the emptied tanks, which would contain small amounts of residual waste. Encapsulated strontium and cesium waste would be packaged and disposed of in a geologic repository. TRU-contaminated soil sites, pre-1970 buried suspect-TRU contaminated solid waste, and retrievably stored and newly generated TRU-solid waste would be retrieved and appropriately packaged to meet repository acceptance criteria and transported to WIPP for disposal.

In-Place Stabilization and Disposal Alternative

Under this alternative, all Hanford existing and newly generated high-level, TRU, and tank wastes would be permanently disposed of near the surface, but well above the water table, using a protective barrier and marker system. There would be very little processing or treatment of wastes except for those stored in double-shell tanks. All sites would be covered with a protective barrier and marker system that would limit moisture from reaching the waste and would reduce the likelihood of intrusion.

Double-shell tank waste would be retrieved, processed as necessary, solidified in a grout waste form and disposed of near surface. Cesium and strontium capsules could be safely stored until 2010, then transferred to a packaging facility, packaged and disposed of in near-surface drywells covered with a protective barrier and marker system. Wastes in single-shell tanks would be dried and some tanks would be provided with interim heat-removal systems. All tanks would be filled to prevent subsidence and covered with a protective barrier and marker system.

Reference Alternative

The Reference Alternative combines the geologic disposal and in-place stabilization and disposal options for the various waste classes. Disposal in geologic repositories would be implemented for encapsulated strontium and cesium waste, highly radioactive portions of existing and future double-shell tank waste, and retrievably stored and newly generated transuranic solid waste. This would result in about 70 percent (by radioactivity) of the high-level and TRU wastes being disposed of in repositories. The low-level fraction of double-shell tank waste would be made into cement-based grout and disposed of in near-surface vaults.

Single-shell tank waste would be disposed of by in-place stabilization and isolated from the biosphere with the protective barrier and marker system. The previously disposed TRU-contaminated soil sites and pre-1970 buried suspect TRU-contaminated solid waste sites would be further isolated to minimize possibilities of any future migration by use of a protective barrier and marker system. The only pre-1970 buried suspect TRU-contaminated solid waste not located on the 200 Area plateau would be retrieved and processed for disposal as solid TRU waste. Retrievably stored and newly generated TRU solid wastes would be processed and shipped to WIPP for disposal.

No Disposal Action Alternative

The No Disposal Action Alternative is continued storage of Hanford defense wastes. Under this alternative, the waste storage sites would be monitored and maintained, but no disposal actions would be taken. Ongoing activities such as reduction of liquids in single-shell tanks would continue. Double-shell tank wastes would be transferred to new tanks about every 50 years to stay within the minimum design life for double-shell tanks. Cesium and strontium capsules would be placed in drywell storage with continued surveillance. Retrievably stored TRU waste would be reclassified as buried solid TRU waste after the 20-year retrievability period has passed. TRU-contaminated soil sites and buried suspect TRU-contaminated solid waste sites would continue to be monitored and maintained.

Preferred Alternative

The Preferred Alternative, presented in the Final HDW-EIS, consists of proceeding with disposal actions described in the Reference Alternative for some waste classes but deferral of disposal decisions for three other waste classes until additional development and evaluation are completed.

Existing and future double-shell tank waste will be pretreated to separate the waste into two fractions. The high-level fraction will be process in the HWVP and disposed of in a geologic repository, and the remaining low-activity fraction grouted and disposed of near surface in preconstructed lined concrete vaults. Design, construction, and operation of HWVP, completion of pretreatment modifications and operation of the pretreatment facility, currently planned to be at B-Plant, and construction and operation of grout vaults will be implemented. A protective barrier will be placed over the vaults prior to final closure. Mixed waste disposal will conform with the Resource Conservation and Recovery Act (RCRA) requirements.

Retrievably stored and newly generated TRU-contaminated solid waste will be retrieved, processed as necessary, and sent to WIPP for disposal. Encapsulated cesium and strontium wastes will continue to be stored safely until such time as a geologic repository is ready to receive this waste for disposal. Prior to shipment to a geologic repository, these wastes will be packaged in accordance with repository waste acceptance specifications.

Decisions on final disposition will be postponed on three waste types (single-shell tank waste, pre-1970 buried suspect TRU-contaminated solid waste, and TRU-contaminated soil sites) until additional development and evaluation are completed. The one exception is that in order to consolidate the waste DOE will proceed with exhuming and processing the only pre-1970 buried suspect TRU-contaminated solid waste site (known as the 618–11 site) located outside the 200 Area plateau.

Storage of single-shell tank waste will be continued. Prior to a decision on disposal of this waste, additional development and evaluation will be performed as follows: radioactive and

hazardous waste constituents will be characterized; barrier performance will be demonstrated by both instrumented field tests and modeling; the need and methods to improve the stability of the waste form will be determined, and destruction or stabilization alternatives for hazardous constituents will be evaluated; and methods for retrieving, processing, and disposing of this waste will be evaluated. Following this additional development and evaluation, alternatives for final disposal will be analyzed in a supplement to the HDW-EIS before the final disposal decision(s). This supplement will be issued in draft for pubilc review and comment.

For the pre-1970 buried suspect TRU-contaminated solid waste and TRU-contaminated soil sites (except for the 618–11 site) the present remedial action program will continue. Further development and evaluation are necessary before decisions on final disposition can be made for these waste classes. These evaluations will be conducted in accordance with the DOE's responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended. Development and evaluation for these two waste classes include additional characterization of selected sites' radioactive and hazardous waste constituents, establishing criteria to identify wastes unacceptable for in-place disposal, and determining and evaluating methods for retrieval, processing, and preparing this fraction for disposal. The need for and methods to improve the isolation potential and stability of the waste form will be evaluated, and void subsidence control will be demonstrated. Additional environmental analysis will be performed and appropriate environmental documentation prepared before a final decision(s) on these waste classes is made.

Basis for Decision

In compliance with NEPA, DOE has analyzed the environmental impacts of each alternative described in the HDW-EIS. DOE considered all comments received on the Draft HDW-EIS in the preparation of the Final HEW-EIS which contains DOE's reponses to those comments, and in the identification of the preferred alternative. DOE also has considered comments received on the Final HDW-EIS in making its decision.

The short- and long-term environmental impacts, DOE's commitment to provide for the safe, permanent disposal of the wastes, and costs were all considered in identifying the Preferred Alternative as the alternative to be implemented. The Preferred Alternative is judged also to be the enviromentally preferred alternative.

The No Disposal Action Alternative, continuation of current waste management practices over the long-term for waste that is not already disposed of, was not selected by DOE because it is contrary to DOE's commitment to provide safe, permanent disposal of the wastes.

The health and environmental impacts of the Geologic Disposal and In-place Stasbilization and Disposal alternatives are relatively low and bound the impacts of the Reference and Preferred Alternatives. When the short-term (operational, transportation) and long-term impacts (from final disposal) are compared between the Geologic and In-place Stabilization and Disposal Alternatives, the Geologic Alternative has the greater short-term health and environmental impacts and lower long-term impacts. The In-place Stabilization and Disposal Alternative has lower short-term impacts, but has the potential for the greater long-term impacts.

The lower short-term impacts associated with retrieval and processing of readily retrievable waste classes together with the reduced potential for long-term impacts provide the basis for the decision to proceed with disposal in geologic repositories as described in the Preferred Alternative. This decision is consistent with the evaluations and decision resulting from the "Final Environmental Impact Statement—Management of Commercially Generated Radioactive Waste" (DOE/EIS–0046F) October 1980; the "Final Environmental Impact Statement—Long Term Management of Defense High-Level Radioactive Waste, Savannah River Plant (Research and Development Program for Immobilization)" (DOE/EIS–0023) Novembver 1979; the "Final Environmental Impact Statement—Defense Waste Processing Facility, Savannah River Plant, Aiken, SC" (DOE/EIS–0082) February 1982; and the "Final Environmental Impact Statement—Waste Isolation Pilot Plant" (DOE/EIS–0026) October 1980. These decisions are also consistent with the position taken by the Department in the "Defense Waste Management Plan" (DOE/DP–0015) to dispose of readily retrievable high-level and transuranic waste in geologic repositories.

The technology exists to process readily retrievable and newly generated wastes (double-shell tank waste, encapsulated cesium and strontium waste, and retrievably stored and newly generated TRU waste) for final disposal. DOE considers the impacts associated with this technology to be acceptably low. Borosilicate glass was previously selected as the waste form for high-level waste for two other sites in the United States and is the selected form for high-level waste in Germany, France, and Japan. The HWVP, in addition to virifying double-shell tank waste, will be designed with sufficient flexibility to accommodate all single-shell tank waste should the decision be made to recover this waste. The near-surface disposal of the residual low-activity wastes (involving the Transportable Grout Facility) from procession of tank wastes involves existing technologies even though new in application. The technology exists to treat newly generated and retriveably stored TRU waste for disposal.

Retieval of all the single-shell tank wastes, TRU-contaminated soil sites, and buried suspect TRU wastes for disposal in a geologic repository would have greater short-term risks than for the readily retrievable wastes given the current waste retrieval and processing methods. These three classes of wastes, including their hazardous components, are not well characterized. The efficacy of possible methods of treating and disposing of these wastes is not yet proven and the consequences of such actions are not yet well defined. Therefore, additional waste characterization and additional engineering analysis of waste retrieval and disposal options are necessary before decisions for final disposition can be made regarding geologic or in-place stablization and disposal of these wastes. These wastes can continue to be stored safely and monitored while waste characterization and engineering development and evaluation are being conducted.

Mitigation of Environmental Impacts

All practical means will be used to minimize worker exposure, limit releases to the environment, and protect public health. Contaminated soil sites and buried suspect TRU-contaminated waste sites will continue to be monitored and maintained to protect against subsidence or animal and plant intrusion which could release contamination into the environment. Removal of liquids from single-shell tanks will be continued to reduce the potential for future tank leaks. In some cases retrievably stored TRU wastes will be removed remotely to minimize worker exposures. Facilities will be designed to effectively control releases and to minimize environmental impacts. Airborne emissions and any other

projected releases of radioactive and hazardous waste to the environment will be kept as low as reasonably achievable. Land use and use of nonrenewable resources will be minimized to the extent possible. Use of potentially hazardous chemicals in the processing will be kept to the minimum necessary. An extensive environmental monitoring system (air quality, water quality, etc.) will be maintained both during and after disposal operations to ensure compliance with regulatory requirements and the effectiveness of the design. This monitoring program will allow for mitigating actions to be taken in a timely fashion should the need arise.

Considerations in the Implementation of the Decision

Prior to construction of HWVP and the processing faciality for TRU waste, the DOE will evaluate the need for and prepare any additional NEPA documentation required for these facilities. Disposal operations will be conducted in compliance with all applicable environmental regulations, standards, and permit requirements. The long-term protection of the environment and future populations will be a primary goal of all opertions. The DOE intends to maintain an open process with respect to implementing these decisions. Such an open process will include continuing dialogue with the States of Washington and Oregon, with Federal agencies, and other affected parties. The DOE intends to continue having appropriate reviews by outside technical experts, such as the National Academy of Sciences, United States Geological Survey, the Environmental Protection Agency, and independent consultants.

Prior to disposal, DOE will continue to maintain the wastes in an environmentally sound manner and monitor the site with environmental measurement and surveillance programs.

For the Unites States Department of Energy.

Troy E. Wade II,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 88-8155 Filed 4-13-88; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Renew Grant With the Ohio State University

AGENCY: Department of Energy.

ACTION: Notice of restricted eligibility for grant renewal.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a renewal award under Grant Number DE-FG01-86CE26565 to the Ohio State University Research Foundation under the DOE's District Heating and Cooling Research Opportunity for Energy Conservation Retrofit Activities to select and test friction reducing additives for district cooling systems.

Scope: This grant will provide for follow up research in the reduction of pumping energy losses in district heating and cooling systems in the area of complementary friction reduction additives research. Ohio State University will screen friction reducing additives for district cooling systems, and test promising additives for pressure drop, heat transfer impact and longevity in their friction test laboratory.

The Ohio State University initial proposal was to screen and test additives for district heating systems. In the current work over ten additives were tested for friction reduction, heat transfer and additive stability. The results have shown that each additive is potent only in a given range of temperatures. Therefore, the additives found to be promising for district heating may not reduce friction in district cooling.

The proposed modification will add the screening of additives for district cooling systems. Similar screening and testing of additives as has been performed for district heating will now be performed for district cooling. The use of additives to reduce friction will also reduce pumping costs, thus improving the efficiency of district cooling systems and reducing operating cost.

Eligibility: Eligibility for this renewal award is being limited to Ohio State University because the work to be performed derives from projects initiated under the basic grant. The project was one of six projects selected through a competitive solicitation in 1986. The solicitation included a provision for follow-up of complementary research if appropriate. In addition, Ohio State University has built a facility for testing of additives screening and testing and the proposed modification is complementary and consistent with the advanced fluids project objectives. The University has knowledge and expertise in conducting additives screening and testing. The proposed work, to screen and test additives for district cooling applications, is an integral part of the screening of additives for district heating applications. Based on the program office's cost evaluation, the proposed renewal award is advantageous to the government. It is estimated that Ohio State University will perform the research at least cost to the Government in terms of monetary and time considerations. This continuation will provide the necessary coordination to accomplish the goal of this program

The term of this grant extension for additional work shall be from June 1, 1988, through June 30, 1989.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Tillman, MA-453.2, 1000 Independence Ave. SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 88-8205 Filed 4-13-88; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date & Time: Monday, May 2, 1988, 9:00 a.m. to 6:00 p.m., Tuesday, May 3, 1988, 8:00 a.m. to 6:00 p.m.

Place: U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue SW., Washington, DC 20585.

Contact: Wallace R. Kornack, Executive Director, ACNFS S-3, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda:

May 2, 1988

- Review of High Flux Isotope Reactor
- Review of Savannah River Reactors
- Noon to 1:00 p.m.—Lunch
- Safety Criteria and Standards
- Review of Selected Programs and Projects
- Public Comment

May 3, 1988

- Management, Organization, and Responsibilities Regarding Safety
- Review of Selected Programs and

Projects
- Noon to 1:00 p.m.—Lunch
- Committee Organization and Planning
- Public Comment

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 11, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-8206 Filed 4-13-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-17-NG]

National Energy Systems, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 30, 1988, of an application filed by National Energy Systems, Inc. (National Energy), for blanket authorization to import natural gas from canada on a "short-term" spot market basis. National Energy intends to import up to 200 MMcf of Canadian natural gas per day and up to a maximum of 146 Bcf over a two-year term beginning on the date of first delivery.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed no later than May 16, 1988.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., May 16, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of National Energy's application is available for inspection and copying in the Natural Gas Division Docket Room, 5A-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 7, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-8138 Filed 4-13-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-322-000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

April 8, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP88-322-000]

Take notice that on March 31, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-322-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) to establish a new delivery point to its existing GS-1 firm sales customer, the City of Linden, Tennessee (Linden), under Applicant's blanket certificate issued in Docket No. CP82-413-000 on September 1, 1982, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that pursuant to Linden's request, it has agreed to establish a new GS-1 sales delivery point to Linden in Applicant's Rate Zone 1 to be known as the Lick Creek Meter Station located in Perry County, Tennessee. According to Applicant, the new delivery point is necessary to enable Linden to expand its market area with the scope of its existing contractual entitlements. The total estimated cost of the proposed new delivery point is $33,000.

Applicant does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Linden. Applicant asserts that the establishment of the proposed new delivery point is not prohibited by Applicant's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Applicant's other customers.

Comment date: May 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP88-315-000]

Take notice that on March 28, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP88-315-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a best efforts transportation service for LTV Steel Company, Inc. (LTV), an industrial end-user, under the certificate issued in Docket No. CP86-582-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated January 29, 1988, it proposes to receive up to 70,000 MMBtu of natural gas, plus overrun gas as permitted by Natural's Rate Schedule ITS at twenty receipt points located in Oklahoma, Louisiana, Texas and offshore Texas and redeliver the gas at existing interconnections with (a) Illinois Power Company (IPC) located in LaSalle County, Illinois, (b) Northern Indiana Public Service Company (NIPSCO) located in Cook County, Illinois and (c) the Peoples Gas Light and Coke Company (PGL & C) located in Cook County, Illinois. It is indicated that IPC, NIPSCO and PGL & C, three local distribution companies, would then redeliver the gas to LTV at LTV's Hennepin, Illinois, plant, Indiana Harbor Works and Chicago South Works, respectively.

Natural further states that the average day, maximum day and annual volumes would be 45,000 MMBtu of natural gas, 70,000 MMBtu of natural gas and 16,425,000 MMBtu of natural gas, respectively. Natural indicates that no facilities need be constructed to implement the service. Natural also indicates it commenced on January 29, 1988, a transportation service for LTV under the 120-day authorization of § 284.223 of the Commission's Regulations.

Natural states that the primary term of the transportation service would expire April 30, 1993, but that the service would be extended on a month to month basis thereafter unless cancelled by five days prior notice by either party.

Natural proposes to charge the rates and abide by the terms and conditions provided by its Rate Schedule ITS.

Comment date: May 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP86-349-004]

Take notice that on March 22, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86-349-004 a petition to further amend the order issued in Docket No. CP86-349-000, as amended, pursuant to section 7(c) of the Natural Gas Act, so as to extend the term of the transportation service authorized beyond the present expiration dates, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Texas Gas was authorized in Docket No. CP86-349-000 to transport natural gas on behalf of 10 customers (6 interstate pipeline, 3 intrastate pipelines and 1 local distribution company). It is further stated that in subsequent petitions to amend, the certificate has been amended to extend the term for two of the interstate pipelines to June 13, 1988, and for the remaining 7 customers (one of the intrastate pipelines was deleted from the authorization) to the earlier of June 12, 1988, or the date on which Texas Gas accepts a blanket certificate pursuant to § 284.221 of the Commission's Regulations.

Texas Gas requests that the certificate be furhter amended to extend the term of the transportation authorization for all 9 customers to the earlier of 1 year from the respective expiration dates (June 13, 1988, for the two interstate pipelines and June 12, 1988, for the remaining 7 customers) or the date on which Texas Gas accepts a blanket certificate pursuant to Section 284.221 of the Commission's Regulations. It is asserted that in all other respects, the transportation authorization would remain the same.

Comment date: April 22, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. ANR Pipeline Company

[Docket No. CP88-317-000]

Take notice that on March 28, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-317-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to (1) reduce annual contract quantity (ACQ) levels for certain of ANR's resale customers, (2) abandon the entire service ANR performs for one customer under Rate Schedule LVS-1 and abandon Rate Schedule LVS-1 and (3) increase the ACQ level for one resale customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that the ACQ's requests reflect customer nominations wth the

net effect of those nominations being a decrease in ANR's total ACQ level by a total of 312,717,612 dt equivalent of natural gas. Specifically, ANR proposes to permanently abandon sales service in excess of the sales ACQ service to 45 customers under Rate Schedules MC–1, CD–1, and SGS–1 by a total of 297,752,050 dt equivalent of natural gas and to increase the ACQ to one customer, St. Joseph Light & Power Company by 71,318 dt equivalent of natural gas. Also, ANR proposes to abandon all service under Rate Schedule LVS–1 to one customer, North Central Public Service Company (North Central) and to abandon the Rate Schedule LVS–1 altogether, ANR indicates that North Central is the only customer under the LVS–1 Rate Schedule and no longer requires the service. (See the attached appendix summarizing the requested changes).

Comment date: April 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

ANR PIPELINE COMPANY—EXISTING AND RENOMINATED ANNUAL CONTRACT QUANTITIES (ACQ) (DTH)

Line No. and customer	Existing ACQ level	Renominated ACQ level	Increase (decrease) in ACQ level
(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)
Rate schedules MC–1, CD–1 & S6S–1:			
1. Albany, Missouri, City of	383,810	138,000	(245,810)
2. Aledo, Illinois, City of	716,063	310,000	(406,063)
3. Alta Vista, Kansas, City of	189,041	50,000	(139,041)
4. Associated Natural Gas Company	1,627,685	1,300,000	(327,685)
5. Bethany, Missouri, City of	496,470	300,000	(196,470)
6. Bloomfield, Iowa, City of	477,375	220,000	(257,375)
7. City Gas Company	1,028,040	850,000	(178,040)
8. Community Natural Gas Company, Inc	485,013	250,000	(235,013)
9. Fountaintown Gas Company, Inc	1,050,225	775,000	(275,225)
10. Grant City, Missouri, City of	295,973	65,000	(230,973)
11. Great River Gas Company	3,650,000	750,000	(2,900,000)
12. Illinois Power Company	2,847,768	1,050,000	(1,797,768)
13. Indiana Gas Company, Inc.	486,621	200,000	(286,621)
14. Iowa Electric Light & Power Company	1,107,648	860,000	(247,648)
15. Iowa Southern Utilities Company	8,500,000	4,400,000	(4,100,000)
16. Lamoni, Iowa, City of	515,565	200,000	(315,565)
17. Lineville, Iowa, City of	114,570	25,000	(89,570)
18. Madison Gas & Electric Company	23,059,361	15,500,000	(7,559,361)
19. Michigan Consolidated Gas Company	280,000,000	125,000,000	(155,000,000)
20. Michigan Gas Company	16,330,822	12,000,000	(4,330,822)
21. Michigan Gas Utilities Company	19,113,110	14,400,000	(4,713,110)
22. Milan, Missouri, City of	706,515	220,000	(486,515)
23. Missoun Valley Natural Gas Company	975,755	413,500	(562,255)
24. Morning Sun, Iowa, City of	190,950	75,000	(115,950)
25. Moulton, Iowa, City of	86,309	42,000	(44,309)
26. New Boston, Illinois, City of	152,760	53,000	(99,760)
27. North Central Public Service Company	3,179,428	1,200,000	(1,979,428)
28. Northern Indiana Fuel & Light Co., Inc.	2,122,560	1,000,000	(1,122,560)
29. Northern Indiana Public Service Company	2,329,590	1,615,787	(713,803)
30. Ohio Gas Company	353,760	150,000	(203,760)
31. Ohio Valley Gas Corporation Paris Henry County Public	2,053,602	820,000	(1,233,602)
32. Utility District	1,552,858	900,000	(652,858)
33. Princeton, Missouri, City of	361,277	90,000	(271,277)
34. St. Joseph Light & Power Company	2,078,682	2,150,000	71,318
35. Stanberry Missouri, City of	248,235	85,000	(163,235)
36. Unionville, Missouri, City of	496,470	145,000	(351,470)
37. Mayland, Iowa, City of	162,308	80,000	(82,308)
1. West Ohio Gas Company	1,395,126	1,000,000	(395,126)
2. Wetsore, Kansas, City of	76,380	23,100	(53,280)
3. Winfield, Iowa, City of	181,403	85,000	(96,403)
4. Wisconsin Fuel & Light Company	13,681,266	9,000,000	(4,681,266)
5. Wisconsin Gas Company	126,680,000	77,500,000	(49,180,000)
6. Wisconsin Natural Gas Company	71,612,752	48,500,000	(23,112,752)
7. Wisconsin Power & Light Company	28,570,306	20,600,000	(7,970,306)
8. Wisconsin Public Service Corporation	55,213,007	35,000,000	(20,213,007)
9. Wisconsin Southern Gas Company, Inc.	534,660	400,000	(134,660)
10. Subtotal	677,471,119	379,790,387	(297,680,732)
Rate Schedule LVS–1:			
11. North Central Public Service Company	15,036,880	0	(15,036,880)
12. Subtotal	692,507,999	379,790,387	(312,717,612)
13. Customers not renominating ACQ's	2,904,720	2,904,720	—
14. Total	695,412,719	382,695,107	(312,717,612)

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-8226 Filed 4-13-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $390,000 (plus accrued interest) obtained pursuant to a consent order between the DOE and Sauvage Gas Company, Inc. and Sauvage Gas Service Company, Inc. The funds will be distributed to refund applicants who purchases propane, butane, natural gasoline, middle distillates or NGL mixed stream products (the covered products) from Sauvage during the period June 13, 1973 through the date of decontrol of each covered product (the refund period).

DATE AND ADDRESS: Applications for refund must be filed on or before July 13, 1988, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should be filed in duplicate and display a conspicuous reference to Case Number KEF-0024.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the Procedural Regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Final Decision and order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute monies obtained from Sauvage Gas Company, Inc. and Sauvage Gas Service Company, Inc. (Sauvage) to settle alleged pricing violations with respect to the firms' sales of refined petroleum products during the period January 1, 1973 through January 27, 1981. Under the terms of the Consent Order, Sauvage remitted $390,000 which is being held in an interest-bearing escrow account.

We will distribute these funds in two stages. In the first stage, we will accept claims from identifiable purchasers of Sauvage covered products who may have been injured by Sauvage's pricing practices during the refund period. The specific requirements which an applicant must meet in order to receive a refund are set out in Section II of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of covered products which they purchased from Sauvage. If any funds remain after meritorious claims are paid in the first stage, they may be used for indirect restitution in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99-509, 1 Fed. Energy Guidelines ¶ 11,702.

Applications for refunds may now be filed by customers who purchased covered products from Sauvage during the refund period. Applications must be filed within 90 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All applications received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: April 7, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of The Department of Energy

Implementation of Special Refund Procedures

April 7, 1988.

Names of Firms: Sauvage Gas Company, Inc. and Sauvage Gas Service Company, Inc.

Date of Filing: March 28, 1986.

Case Number: KEF-0024.

Under the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate procedures to distribute funds received as a result of enforcement proceedings, in order to remedy the effects of actual or alleged violations of DOE regulations. On March 28, 1986, in accordance with the provisions of Subpart V, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order that it entered into with Sauvage Gas Company, Inc. and Sauvage Gas Service Company, Inc. (hereinafter collectively referred to as Sauvage). This Decision contains the procedures which the OHA has formulated to distribute the funds received pursuant to that consent order.

I. Background

During the period of federal petroleum price controls, Sauvage engaged in the purchase and resale of refined petroleum products, including middle distillates, propane, butane, natural gasoline and natural gas liquid (NGL) mixed stream products. Sauvage's sales were primarily concentrated in the Midwestern states. A DOE audit of Sauvage's records revealed possible violations of the price regulations in the

firm's purchase and resale of petroleum products. Based on this audit, the ERA issued a Proposed Remedial Order (PRO) on November 4, 1981, alleging that during the period September 1973 through July 1977, Sauvage committed certain pricing violations in its sales of NGLs and NGL products. On August 27, 1982, the OHA granted the ERA's motion to withdraw the Sauvage PRO. *Sauvage Gas Company*, 10 DOE ¶83,008 (1982). However, the ERA continued to challenge the firm's pricing practices.

In order to settle all claims and disputes between Sauvage and the DOE regarding the firm's sales of refined petroleum products during the period January 1, 1973 through January 27, 1981 (the consent order period), the parties entered into a consent order on September 29, 1985. Under the terms of the consent order, Sauvage deposited $390,000 into an interest-bearing escrow account for ultimate distribution by the DOE. With interest, the total value of the Sauvage escrow account has grown to $454,277.69 as of February 29, 1988.

On December 7, 1987, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that make a reasonable showing of injury as a result of Sauvage's alleged overcharges. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 52 FR at 47630 (December 15, 1987). We received one comment concerning our proposed procedures from Eric T. Small of Energy Refunds, Inc. This comment will be addressed below in our discussion of the final procedures to be adopted for this proceeding.

II. Refund Procedures

Subpart V sets forth general guidelines to be used by the OHA in formulating a plan for distributing funds received as a result of an enforcement proceeding. The Subpart V process may be used in situations like the present case where the DOE is unable to readily identify those persons who likely were injured by alleged overcharges or ascertain the amount of the refunds they should receive.

The distribution of refunds in this proceeding will take place in two stages. In the first stage, we will accept claims from identifiable purchasers of Sauvage propane, butane, natural gasoline, middle distillates and NGL mixed stream products (the covered products) who may have been injured by Sauvage's pricing practices during the period of federal price controls. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Sauvage covered products during the period June 13, 1973 through the date of decontrol of each covered product.[1] If any funds remain after all meritorious first-stage claims have been paid, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99-509, Title III, 1 Fed. Energy Guidelines ¶11,702 *et seq.*

A. *Refunds to Identifiable Purchasers.* In the first stage of the Sauvage refund proceeding, we will distribute the funds currently in escrow to claimants who demonstrate that they were injured by Sauvage's alleged overcharges. While there is a variety of methods by which such a showing can be made, a refiner, reseller or retailer claimant is generally required to demonstrate (i) that it maintained a bank of unrecovered increased product costs, in order to show that it did not pass the alleged overcharges through to its own customers, and (ii) that market conditions were the reason that it did not pass through those increased costs. For periods in which the DOE regulations did not require the computation of cost banks, a claimant in the oil business will only be required to make the latter showing, which might be made through a demonstration of lowered profit margins, decreased market shares, or depressed sales volume during the period of purchases from Sauvage. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶5,240 at 88,451 (1986). Claimants may also use the "competitive disadvantage methodology" to demonstrate that they were injured by Sauvage's alleged overcharges. *See, e.g., Dorchester Gas Corporation/Phillips Petroleum Co.*, 16 DOE ¶85,400 (1987).

We will adopt presumptions of injury which have been used in many prior refund cases. These presumptions are founded upon our experience in prior Subpart V proceedings and upon specific information concerning Sauvage's regulated operations during the consent order period. Presumptions in refund cases are specifically authorized by the Subpart V regulations. *See* 10 CFR 205.282(e). These presumptions will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available, while permitting applicants to participate in the refund process without incurring inordinate expense.

1. *End-Users.* The first presumption we will use is that end-users or ultimate consumers whose businesses were unrelated to the petroleum industry were injured by Sauvage's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Therefore, end-users of Sauvage covered products need only document their purchases volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Sauvage products for consumption as fuel or raw materials will not be considered end-users for the purpose of the showing of injury. *Seminole Refining Inc.*, 12 DOE ¶ 85,188 at 88,576 (1985).

2. *Agricultural Cooperatives and Regulated Utilities.* We also will adopt the presumption that regulated industries, such as public utilities, and agricultural cooperatives absorbed the alleged Sauvage overcharges. These types of applicants will not have to submit any further evidence of injury in order to qualify for the full amount of volumetric refund based on purchase volumes that were used by themselves or sold to members. Any overcharges suffered by such firms would have been passed through to their customers by the regulatory bodies or agreements that control the prices they may charge. Similarly, any refunds they receive would automatically be passed through to their customers. Consequently, we will permit an entity of this type to receive a full volumetric refund, provided that it includes in its refund application a full explanation of the manner in which refunds will be passed through to its customers. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982).

3. *Applicants Claiming a Refund of $5,000 or Less.* Another presumption we will use is that resellers or retailers of

[1] The decontrol dates for the covered products are as follows: January 28, 1981, for propane and NGL mixed stream products; January 1, 1980, for butane and natural gasoline; and July 1, 1976, for middle distillates.

Sauvage covered products seeking small refunds were injured by the alleged regulatory violations settled in the Sauvage consent order. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers or retailers who purchased relatively small amounts of product from Sauvage. We are also concerned that the cost to the applicants and to the government of compiling and analyzing information to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986) and cases cited therein. Under the small claims presumption, a claimant is not required to submit any additional evidence of injury beyond volumes of Sauvage covered products purchased if its refund claim is below $5,000.

4. *Resellers and Retailers Seeking Larger Refunds.* In his comments, Mr. Small suggested that we adopt a presumption of injury for those purchasers of Sauvage covered products seeking larger refunds. Previously, we have determined that a 60 percent presumption for medium-range purchasers of NGL products accurately reflected the amount of their injury as a result of those purchases. *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 at 88,744 (1987); *Getty Oil Co.*, 15 DOE ¶ 85,064 at 88,123 (1986). Similarly, we have determined that a 50 percent presumption of injury for medium-range middle distillate resellers and retailers was appropriate. *Id.* We agree with Mr. Small that these same presumptions should apply in this proceeding.

For claims based on purchases above $5,000 of Sauvage propane, butane, natural gasoline and NGL mixed stream products, retailers, resellers and refiners that resold Sauvage covered products may elect to receive either $5,000 or 60 percent of their volumetric amount, whichever is larger, up to $50,000.[2] Middle distillate resellers and retailers may elect between the larger of $5,000 or 50 percent of their volumetric amount, up to $50,000. Consequently, a claimant in this group will only be required to provide documentation of its purchase volumes of Sauvage covered products in order to be eligible to receive a refund of either 50 or 60 percent of its total volumetric share.[3] Claimants seeking refunds greater than $50,000, i.e., those who purchased more than 44,754,744 gallons of Sauvage NGL products or more than 53,705,693 gallons of Sauvage middle distillates, will be required to demonstrate that they were injured by Sauvage's alleged overcharges. Any of these claimants may elect to limit their claim to $50,000 rather than submit a detailed showing of injury.

5. *Spot Purchasers.* In the Sauvage PD&O, we proposed to adopt a rebuttable presumption that a reseller or retailer that made only spot purchases from Sauvage did not suffer economic injury as a result of those purchases. We noted in the PD&O that in prior decisions, we have consistently determined that spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full price of the purchases to their own customers. 52 FR at 42,631. *See, e.g., Suburban Propane*, 16 DOE at 86,744–45; *Marathon*, 14 DOE at 88,515. Mr. Small suggested in his comments that we adopt a 20 percent presumption of injury for spot purchasers, but he offered no rationale for this departure from our past practices. We believe that the rationale for the spot purchaser presumption holds true in the present case, and we see no reason to adopt Mr. Small's suggestion. Accordingly, a firm which made only spot purchases from Sauvage will be ineligible to receive a refund, even one below the $5,000 threshold level, unless it presents evidence rebutting the spot purchaser presumption that it was not injured. In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that: (1) They made the spot purchases in order to maintain supplies to base period customers; and (2) they were forced by market conditions to resell the product at a loss. *See Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986); *Waller Petroleum Co./Wooten Oil Co.*, 13 DOE ¶ 85,110 (1985).

B. *Calculation of Refund Amounts.* We will use a volumetric method to divide the Sauvage escrow account among applicants who demonstrate that they are eligible to receive refunds. This method generally presumes that the alleged overcharges were spread equally over all the gallons of covered products sold by Sauvage during the period of federal petroleum price controls. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. *See generally* 10 CFR Part 212. However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that it incurred a disproportionate share of alleged overcharges. In other words, the volumetric presumption will be rebuttable, as will all of the other presumptions that we are adopting. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,189 (1982).

Under the volumetric method, a claimant will be eligible to receive a refund equal to the number of gallons of Sauvage covered products that it purchased during the period of price controls times the volumetric refund amount. The volumetric refund amount is calculated by dividing the $390,000 received from Sauvage by the total gallons of covered products which the firm sold during the period of controls.[4] This calculation yields a volumetric refund amount of $.001862 per gallon. In addition, successful claimants will receive a proportionate share of the accrued interest.

As in previous cases, we will establish a minimum refund amount of $15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Suburban Propane*, 16 DOE at 88,746.

C. *General Refund Application Requirements.* Pursuant to 10 CFR 205.283, we will not accept Applications for Refund from individuals and firms that purchased middle distillates, propane, butane, natural gasoline and NGL mixed stream products sold by Sauvage between June 13, 1973 and the date of decontrol of each covered product. *See* note 1. There is no specific application form which must be used.

[2] That is, claimants who purchased between 2,685,285 gallons and 44,754,744 gallons of Sauvage covered products during the period when those products were subject to federal price controls, may elect to use this presumption.

[3] A medium-range claimant may elect not to receive a refund based upon this presumption and may instead attempt to show that it is eligible for a refund equal to its full allocable share by making a detailed showing of injury using the general criteria set forth above. However, the 50 or 60 percent presumptions will not be available to medium-range claimants who submit a detailed showing which leads us to conclude that they are eligible for a refund of less than 50 or 60 percent of their volumetric share.

[4] Based on information contained in the Sauvage audit file, we estimate that the firm sold approximately 209.4 million gallons of covered products during the period when the price of those products was regulated by the DOE.

All Applications for Refund must be printed or typed, signed by the applicant, and should include the following information:

(1) A conspicuous reference to Case Number KEF–0024 and the applicant's business name and address.

(2) The name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the Application.

(3) The manner in which the applicant used the Sauvage covered products, i.e., whether it was a refiner, reseller, retailer or end-user.

(4) The volume of Sauvage middle distillates, propane, butane, natural gasoline and NGL mixed stream products it purchased during each month of the period June 13, 1973 through the date of decontrol of each covered product. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the covered product was originally sold by Sauvage.

(5) If the applicant is a reseller, retailer or refiner which wishes to claim a refund in excess of $5,000 and does not elect the medium-range injury presumption for calculating its refund, or which wishes to claim a refund in excess of $50,000, it should also:

(a) Furnish the OHA with quarterly bank calculations of unrecouped product cost increases through January 27, 1981;

(b) State whether it or any of its affiliates have filed any other Applications for Refund in which it referred to its level of banks as a basis for refund; and

(c) Submit evidence that it did not pass through the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases were infeasible.

(6) If the applicant is in any way affiliated with Sauvage, it must indicate the nature of that affiliation.

(7) If there has been a change in ownership of the entity that purchased the Sauvage covered products, the applicant must provide the names and addresses of the other owners, and should either state the reasons why a refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they waive their claim to a refund.

(8) If the applicant is involved in DOE enforcement or private actions filed under section 210 of the Economic Stabilization Act, it should describe the action and its current status. If the applicant was a party to such an action which is no longer pending, it should indicate how the proceeding was resolved. The applicant must keep the OHA informed of any change in status during the pendency of its Applications for Refund. *See* 10 CFR 205.9(d).

(9) All applicants must submit the following signed statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." 10 CFR 205.283(c) and 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision in the Federal Register. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must indicate this and submit two additional copies of its application from which confidential information has been deleted. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Sauvage Gas Company, Inc. and Sauvage Gas Service Company, Inc. pursuant to consent order number 710H06008Z, entered on September 29, 1985, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision in the **Federal Register.**

George Breznay,

Director, Office of Hearings and Appeals.

Date: April 7, 1988.

[FR Doc. 88–8137 Filed 4–13–88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3365–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review, and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instruments.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Quality Assurance Specifications and Requirements (EPA ICR #0866).

Abstract: State governments, local governments, and non-profit institutions when applying for Federal assistance to do research studies must include a *narrative* statement describing the data collections procedures to be used. For "non-research" studies, these same entities must submit a detailed data quality assurance plan with their assistance applications.

Respondents: State Governments, local Governments, and non-profit institutions.

Estimated Burden: 9,900 hours.

Frequency of Collection: one time per application.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223) 401 M Street SW., Washington, DC 20460.

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084).

Dated: April 1, 1988.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–8784 Filed 4–13–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 88–256]

FSLIC Insurance Premium

Date: April 7, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation orders the assessment against each insured institution of an additional premium for FSLIC insurance

in an amount equal to one quarter of one-eighth of one percent (one thirty-second of one percent) of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1987.

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Deputy Director of Operations, FSLIC, (202) 254–2029; or Terrill Rupp, Attorney, Office of General Counsel (202) 377–7051, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC") may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* that the total amount so assessed in any one year against any insured institution shall not exceed one eighth of one per centum of the total amount of the accounts of the insured members of such institution and *provided further* that the amount of the additional premium for the calendar year 1988 may not exceed one-twelfth of one percentum of the total amount of the accounts of the insured members of such institution unless the Bank Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85–142, dated February 22, 1985, by Resolution No. 85–437, dated June 5, 1985, by Resolution No. 85–770, dated August 28, 1985, by Resolution No. 85–1142, dated December 9, 1985, by Resolution No. 86–213, dated March 6, 1986, by Resolution No. 86–582, dated June 10, 1986, by Resolution No. 86–941, dated September 2, 1986, by Resolution No. 86–1253, dated December 15, 1986, by Resolution No. 87–281 dated March 16, 1987, by Resolution No. 87–610 dated May 27, 1987, by Resolution No. 87–950 dated September 9, 1987, and by Resolution No. 87–1254 dated December 14, 1987, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth, as of December 31, 1986, for the ninth, as of March 31, 1987, for the tenth, as of June 30, 1987, for the eleventh and as of September 30, 1987 for the twelfth; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85–142, dated February 22, 1985, Resolution No. 85–437, dated June 5, 1985, Resolution No. 85–770, dated August 28, 1985, Resolution No. 85–1142, dated December 9, 1985, Resolution No. 86–213, dated March 6, 1986, Resolution No. 86–582, dated June 10, 1986, Resolution No. 86–941, dated September 2, 1986, Resolution No. 86–1253, dated December 15, 1986, Resolution No. 87–281, dated March 16, 1987, Resolution No. 87–610 dated May 27, 1987, Resolution No. 87–950 dated September 9, 1987, and Resolution No. 87–1254 dated December 14, 1987, upon the Corporation's insurance reserves:

Now, therefore, it is resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through 1987; and

Resolved further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85–142, require the assessment of additional insurance premiums pursuant to section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85–142, No. 85–437, No. 85–770, No. 85–1142, No. 86–213, No. 86–582, No. 86–941, No. 86–1253, No. 87–281, No. 87–610, No. 87–950, and No. 87–1254, in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. Severe pressures on the Corporation exist which necessitate an infusion of additional funds;

3. Postponement of a reduction in the assessment of an additional premium, as provided in section 404(c)(2) of the NHA, will improve the financing environment for selling obligations of the Financing Corporation organized pursuant to the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987;

4. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) and 404(c)(1) of the NHA, by order of the Corporation; and

Resolved further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the first quarter of 1988, in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of such insured institution determined as of December 31, 1987; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about April 30, 1988; and

Resolved further, That the Executive Director or a Deputy Director of the FSLIC, or a designee of either of them, ("Director"), shall determine the amount of the additional premium due, including an offset of one quarter of twenty percent (five percent) of each insured institution's pro rata share of the statutorily prescribed amount as provided in section 404(e)(2) of the NHA, to be paid on April 30, 1988, by each insured institution, and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, That the Secretary shall forward this Resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 88–8115 Filed 4–13–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 88–11]

Virginia International Terminals, Inc.; Filing of Petition for Declaratory Order

Notice is given that a petition for declaratory order has been filed by

Virginia International Terminals, Inc. ("VIT") requesting that the Federal Maritime Commission resolve a controversy between VIT and Kawasaki Kisen Kaisha, Ltd. ("K-Line") regarding the effective date of an Addendum (Agreement No. 224–010740–001) to FMC Agreement No. 224–010740, a terminal use agreement originally between VIT, Seapac Services, Inc. and Neptune Orient Line. By virtue of the Addendum, K-Line became a party to FMC Agreement No. 224–010740.

The petition was served on K-Line and that party may file a reply to the petition with the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 on or before May 23, 1988.

An original and fifteen copies of such reply shall be submitted and a copy thereof served on counsel for VIT, J. Stanley Payne, Jr., Esq., 600 World Trade Center, Norfolk, Virginia 23510. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 11101. Participation by persons other than those named above will be permitted only upon grant of a petition to intervene by the Commission pursuant to Rule 72 (46 CFR 502.72). Petitions for leave to intervene shall be submitted on or before the reply date and shall be accompanied by intervenor's complete reply including its factual and legal presentation in the matter.

Joseph C. Polking,

Secretary.

[FR Doc. 88–8240 Filed 4–13–88; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Advisory Committee on the FTS2000 Procurement; Meeting

Notice is hereby given that the General Services Administration (GSA) Advisory Committee on the FTS2000 Procurement will meet on April 22, 1988, from 8:30 a.m. to 4:30 p.m., in the board room of the MITRE Corporation, 7225 Colshire Drive, McLean, VA 22109, to review the plans to evaluate vendor proposals for the FTS2000 procurement. The agenda will relate to (1) FTS2000 program requirements; (2) roles and responsibilities; (3) security and ethics; (4) structure, content, and main issues on the request for proposals; and (5) evaluation scheme, evaluation process, and schedule.

The entire meeting will be closed to the public because procurement sensitive matters, especially the pre-award evaluation scheme and methodology, will be discussed. The exemptions for closing the meeting are cited in 5 U.S.C. 552b(c)(9)(B) (Government in the Sunshine Act).

Less than fifteen days notice of this meeting is being provided due to scheduling difficulties.

Questions regarding this meeting should be directed to John J. Landers (202) 523–5308.

Dated: April 6, 1988.

John J. Landers,

Director, Office of Administration, Information Resources Management Service.

[FR Doc. 88–8112 Filed 4–13–88; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E–0073]

Determination of Regulatory Review Period for Purposes of Patent Extension; Bactroban

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Bactroban and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner for Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that antibiotic.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrea E. Chamblee, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the antibiotic product Bactroban (mupirocin), which is indicated for the topical treatment of impetigo due to Enterobacter species *, *Escherichia coli* *, *Sarcina lutea* *, *Staphylococcus aureus*, *Staphylococcus epidermidis*, *Staphylococcus* species *, alpha hemolytic *Streptococcus* *, beta hemolytic *Streptococcus* *, and *Streptococcus pyrogenes*. (* Efficacy for this organism in this organ system was studied in fewer than 10 infections.) Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Bactroban (U.S. Patent No. 4,071,536) from Beecham Group, p.l.c., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 8, 1988, advised the Patent and Trademark Office that the antibiotic product had undergone a regulatory review period and that the active ingredient, mupirocin, represented the first permitted marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Bactroban is 1,867 days. Of this time, 491 days occurred during the testing phase of the regulatory review period, while 1,376 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 507(d) of the Federal Food, Drug, and Cosmetic Act became effective:* November 22, 1982. The applicant claims October 30, 1982, as the date the investigational new drug application (IND) for the drug became effective. However, FDA records indicate that the IND became effective on November 22, 1982.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act:* March 26, 1984. FDA has verified the applicant's claim that the new drug application for the product (NDA 50–591) was initially submitted on March 26, 1984.

3. *The date the application was approved:* December 31, 1987. FDA has verified the applicant's claim that NDA 50–591 was approved on December 31, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 13, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 11, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 5, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88–8193 Filed 4–13–88; 8:45am]

BILLING CODE 4160–01–M

[Docket No. 88E–0103]

Determination of Regulatory Review Period for Purposes of Patent Extension; Deursil®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Deursil® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Deursil® (ursodiol) which is indicated for patients with radiolucent, noncalcified, gallbladder stones <20 mm in greatest diameter in whom elective cholecystectomy would be undertaken except for the presence of increased surgical risk due to systemic disease, advanced age, idiosyncratic reaction to general anesthesia, or for those patients who refuse surgery. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Deursil® from the CIBA-GEIGY Corp. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 21, 1988, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, ursodiol, represented the first permitted commercial marketing or use of the active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Deursil® is 4,053 days. Of this time, 3,377 days occurred during the testing phase of the regulatory review period, while 676 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* November 27, 1976. The applicant claims November 11, 1976, as the date the investigational new drug application (IND) for the drug became effective. However, FDA records indicate that the IND became effective on November 27, 1976.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* February 24, 1986. FDA has verified the applicant's claim that the new drug application for the drug (NDA 19–594) was initially submitted on February 24, 1986.

3. *The date the application was approved:* December 31, 1987. FDA has verified the applicant's claim that NDA 19–594 was approved on December 31, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension.

In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 13, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 11, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984). Petitions should be in the format specified in 21 CFRA 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 6, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88–8152 Filed 4–13–88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88E–0068]

Determination of Regulatory Review Period for Purposes of Patent Extension; Spectamine®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Spectamine® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrea E. Chamblee, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Spectamine® for use as a lipid-soluble brain-imaging agent. It has been shown to be useful in the evaluation of nonlacumar stroke, expecially when used within 96 hours of the onset of local neurological deficit. The rates of agreement between abnormal images and the neurological exam suggestive of ischematic cerebrovascular insufficiency, appear to increase with the severity of symptoms. Its usefulness for measurement of cerebral blood flow has not been established. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Spectamine® (U.S. Patent No. 4,360,511) from Medi-Physics, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 8, 1988, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, Iofetamine HC1, I–123 injection, represented the first permitted marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Spectamine® is 1,853 days. Of this time, 807 days occurred during the testing phase of the regulatory review period, while 1,046 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* November 29, 1982. The applicant claims December 16, 1982, as the date the notice of claimed investigational exemption (IND) for the drug became effective. However, FDA records, indicate that the IND became effective when FDA notified the applicant by telephone on November 29, 1982, that the IND was removed from clinical hold.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug and Cosmetic Act:* February 12, 1985. FDA has verified the applicant's claim that the new drug application for the product (NDA 19–432) was initially submitted on February 12, 1985.

3. *The date the application was approved:* December 24, 1987. FDA has verified the applicant's claim that NDA 19–432 was approved on December 24, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 13, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 11, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the

docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 5, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88-8150 Filed 4-13-88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Acquired Immune Deficiency Syndrome Service Demonstration Program Grants

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1988 funds are available for Service Demonstration grants to develop projects demonstrating a comprehensive, cost effective, ambulatory and community-based health care and support system for persons with Acquired Immune Deficiency Syndrome (AIDS) and other Human Immunodeficiency Virus (HIV) related conditions. Applicants will be expected to demonstrate a thorough understanding of the AIDS/HIV epidemic as it affects their community, the need and demand for services, and a realistic and comprehensive plan for a service delivery system which builds upon existing community health resources.

Supplement grant applications from current HRSA AIDS Service Demonstration Program grantees listed in Appendix B will be accepted. Additionally, new applicants from the Standard Metropolitan Statistical Areas (SMSAs) with a cumulative total of 300 or more AIDS cases as reported by the Centers for Disease Control as of February 22 are eligible to compete for new grants (see Appendix A).

Funds were appropriated by Pub. L. 100-202 for this purpose under the authority of section 301 of the Public Health Service (PHS) Act (42 U.S.C. 241).

DATE: To receive consideration, both supplemental and new grant applications must be received by the Grants Management Officer by June 13, 1988. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Ms. Patricia D. Mail, Chief, AIDS Service Branch, Room 9-21, 5600 Fishers Lane, Rockville, Maryland 20857 (301-443-6745). Grant applications (Form PHS 5161-1 with revised face sheet HHS Form 424 approved under OMB Number 0348-0006 and additional information regarding business administration or fiscal issues related to the awarding of grants under this notice may be requested from Ms. Glenna Wilcom, Grants Management Specialist, BMCHRD, Parklawn Building, Room 9-21, 5600 Fishers Lane, Rockville, Maryland 20857 (301-443-6745). The original and two copies of the application must be submitted to Ms. Wilcom.

SUPPLEMENTARY INFORMATION:

Program Objectives

The AIDS Service Demonstration Program is intended to support the development and demonstration of community-based systems of care which provide the spectrum of needed services for people with HIV infection and its complications, and provide appropriate alternatives to inpatient hospital care. Such systems must be developed in response to a careful assessment of the community's needs and must assure the coordination of the community's health care resources. Applicants should propose innovative, cost effective means of providing services, and should develop specific strategies to reduce the need for inpatient hospital care and to link together community health resources. For purposes of the grant, consideration must be given to the needs and resources of the entire community defined as the SMSA for which the application is submitted.

Since a disproportionately high number of persons with AIDS and HIV infection are from minority populations, particular attention should be placed on developing appropriate outreach, information and education strategies, and arranging for services so that cultural and language differences are adequately addressed. Additionally, specific AIDS education outreach and counseling programs must be directed toward IV drug users and their sexual partners.

Because of the demonstration nature of the program, emphasis should be placed on how the program can operate without Federal funds 3 years after initial Federal funding and on how the proposed project might serve as a model for other communities with significant numbers of persons with AIDS and other HIV related conditions.

Availability of Funds

Approximately $13.0 million is available in FY 1988 for the AIDS Service Demonstration Program grants. Up to 30 percent of the amount available will be reserved for supplemental awards to current grantees. The balance will be used for new grant awards. Not more than one grant award will be made in any one SMSA.

Applications for both supplemental and new grants will be competitively awarded. The budget and project period for new applicants will be two years, i.e., funds awarded in FY 1988 are for expenditure over the 2 year project period. This requires new applicants to submit a budget for each of the two years as well as a summary budget for the entire period. Applicants for supplemental awards will submit a revised budget for the original 3-year project and budget period that specifies how the funds awarded in prior years are being (have been) used, and how this supplemental award will be used in each of the remaining years of the original project period.

Eligible Applicants

Current grantees are eligible to apply for supplemental grants (See Appendix B). Public and private entities, non-profit and for-profit, located in and providing services to the SMSAs listed in Appendix A are eligible to apply for new grants. Eligible entities may include, but are not limited to State or local health departments; public or private hospitals; and consortia of health care and community organizations which can develop a comprehensive ambulatory community and home based AIDS support program offering appropriate and compassionate care at reduced costs.

Collaboration/Coordination with Other AIDS Programs

To the maximum extent possible the grantees will be expected to work closely and coordinate their activities with the Robert Wood Johnson Foundation AIDS Health Services

Program grantees; the Pediatric AIDS Health Care Demonstration Projects which will be funded by HRSA in Fiscal Year 1988; the AIDS Community Outreach Demonstration Projects supported by the National Institute of Drug Abuse; information, public education/prevention and testing programs supported by the Centers for Disease Control; the drug clinical trial studies and other research programs conducted by the National Institutes of Health; the Community Health Centers and Migrant Health Centers supported by HRSA: State Health Departments or other appropriate State-level representatives, activities of the Office of Minority Health, community based AIDS service organizations, and appropriate State Medicaid Programs.

Review and Evaluation Criteria for New Applications

Applications for the new FY 1988 grants will be reviewed and rated by an objective review committee according to the applicant's demonstration of: the ability of coalesce broad-based community support among appropriate agencies and programs and involve such agencies and programs from all of the cities and counties of the SMSA listed on Appendix A; a thorough understanding of AIDS and the HIV epidemic; the need and demand for ambulatory, community and home-based services, including education and prevention services for individuals with high risk behaviors; and the experience and potential to provide treatment and support to the largest number of patients with AIDS and other HIV related conditions within eligible SMSAs at the least cost.

Applicants must develop an implementation plan that includes a milestone chart or time schedule that shows the phase-in of each component of the delivery system and the expected completion dates of various project objectives over the course of the grant period. All sources of funding to support the organization that will work with the grantee must be accurately reflected in the applicant's budget. Specific attention must be given to assuring comprehensiveness and appropriateness of services, and access to all segments of the affected population. Where appropriate, contigous communities should undertake cooperative regional systems of care in order that duplication of services can be avoided. More detailed information on the review and evaluation criteria may be found in the grant application kit.

Technical Assistance Workshops

The Division of AIDS Programs will conduct Technical Assistance (T.A.) Workshops to respond to questions from potential applicants. The dates, locations and times of the T.A. Workshops are as follows:

1. Date May 5, 1988
   Location—Federal Building—Room 1005, 1200 Main Tower, Dallas, Texas
   Time—9:00 a.m.
2. Date May 19, 1988
   Location—Federal Building—Room 4020—3535 Market Street, Philadelphia, Pennsylvania
   time—9:00 a.m.

Applicants who plan to attend one of the T.A. Workshops must confirm their participation, the location of the workshop they will be attending, and the number of individuals in their party. Confirmation should be made at least two weeks prior to the workshop date to: Ms. Janice Edmonds, Parklawn Building, Room 9–21, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443–6745. If there are changes to the above schedule, applicants will be notified at the time of confirmation.

Review and Evaluation Criteria for Supplemental Applications

Current grantees will compete for available funds through a limited application and review process. These grantees must submit an abbreviated application, not to exceed 20 pages. Priority consideration will be given to those applications that address one or more of the following: Expansion of the existing coalition to include other service and support organizations; expansion and/or redirection of the scope of services within a project to meet identified needs, particularly with respect to minority communities and IV drug users; extension of services and support systems to all areas of the SMSA; and developing a regionalized approach to coordinate services to person s with AIDS. An updated needs-demand assessment must be submitted by the applicant to justify the program elements being proposed. The grantees must also provide a specific time-phased plan that shows how and when the objectives will be met. Instructions for the supplemental applications will be included in the grant application kit.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR Part 74, subpart Q. The five separate sets of cost principles prescribed for grant recipients are: OMB Circular A–87 for State and local governments; OMB Circular A–21 for institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; OMB Circular A–122 for nonprofit organizations; and 48 CFR Chapter 1, Subpart 31.2 for for-profit (commercial) organizations. PHS has elected the option provided in 48 CFR 1–31.2 of not authorizing independent research and development costs.

Other Award Information

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance.

Executive Order 12372

The AIDS Service Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intragovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

(The OMB Catalog of Federal Domestic Assistant number of the AIDS Service Demonstration Program is 13.133)

Date: March 15, 1988.

David N. Sundwall,

Administrator.

Appendix A—Standard Metropolitan Statistical Areas (SMSA) Eligible for New Grants Under the AIDS Service Demonstration Program

SMSA	Cities and counties included in the SMSA
1 Houston, TX	Houston City Brazoria County Fort Bend County Harris County Liberty County Montgomery County Wallter County

SMSA	Cities and counties included in the SMSA
2. Chicago, IL	Chicago City
	Cook County
	DuPage County
	Kane County
	Lake County
	Will County
3. Dallas-Fort Worth, TX.	Dallas City
	Fort Worth City
	Collin County
	Dallas County
	Denton County
	Ellis County
	Hood County
	Johnson County
	Kaufman County
	Parker County
	Rockwall County
	Tarrant County
	Wise County
4. Philadelphia, PA-NJ.	PA
	Philadelphia City
	Bucks County
	Chester County
	Delaware County
	Montgomery County
	Philadelphia County
	NJ
	Burlington County
5. Jersey City, NJ	Jersey City City
	Hudson County
6. Nassau-Suffolk, NY.	Nassau County
	Suffolk County
7. New Orleans, LA	New Orleans City
	Jefferson Parish
	Orleans Parish
	St. Bernard Parish
	St. Tammany Parish
8. Denver-Boulder, CO.	Boulder City
	Denver City
	Adams County
9. Baltimore, MD	Baltimore City
	Anne Arundel County
	Baltimore County
	Carroll County
	Hartford County
	Howard County
10. Detroit, MI	Detroit City
	Lapeer County
	Livingston County
	Macomb County
	Oakland County
	St. Clair County
	Wayne County
11. San Juan, PR	San Juan Municipio
	Bayamón Municipio
	Canóvanas Municipio
	Carolina Municipio
	Cataño Municipio
	Guaynabo Municipio
	Lóiza Municipio
	Toa Baja Municipio
	Trujillo Municipio
12. Riverside-San Bernardino Ontario.	Ontario City
	Riverside City
	San Bernardino City
	Riverside County
	San Bernardino County
13. Phoenix	Phoenix City
	Maricopa County
14. Tampa-St. Petersburg.	St. Petersburg City
	Hillsborough County
	Pasco County
	Pinellas County

Appendix B—Standard Metropolitan Statistical Areas Eligible for Supplemental Grants Under the AIDS Service Demonstration Program

SMSA	Cities and counties included in the SMSA
1. New York, NY-NJ	NJ
	New York City
	Bronx County
	Kings County
	New York County
	Putnam County
	Queens County
	Richmond County
	Rockland County
	Westland County
	NJ
	Bergen County
2. San Francisco-Oakland, CA.	San Francisco City
	Oakland City
	Alameda County
	Contra Costa County
	Marin County
	San Francisco County
	San Mateo County
3. Los Angeles-Long Beach, CA.	Los Angeles City
	Long Beach City
	Los Angeles County
4. Miami, FL	Miami City
	Dade County
5. Washington, DC	Washington, DC
	MD
	Charles County
	Montgomery County
	Prince George's County
	VA
	Arlington County
	Fairfax County
	Loudon County
	Prince William County
	Alexandria City
	Fairfax City
	Falls Church City
	Manassas City
	Manassas City Park
6. Atlanta, GA	Atlanta City
	Butts County
	Cherokee County
	Clayton County
	Cobb County
	DeKalb County
	Douglas County
	Fayette County
	Forsyth County
	Fulton County
	Gwinnett County
	Henry County
	Newton County
	Paulding County
	Rockdale County
	Walton County
7. Boston MA	Boston City
	Essex County
	Beverly City
	Boxford Town
	Danvers Town
	Hamilton Town
	Lynn City
	Lynnfield Town
	Manchester Town
	Marblehead Town
	Middleleton Town
	Nahant Town
	Peabody City
	Salem City
	Saugus Town
	Swampscott Town
	Tospfield Town
	Wenham Town
	Middlesex County
	Action Town
	Arlington Town
	Ashland Town
	Bedford Town
	Belmont Town
	Boxborough Town
	Burlington Town
	Cambridge City
	Carlisle Town
	Concord Town
	Everett City
	Framingham Town
	Holliston Town
	Lexington Town
	Lincoln Town
	Malden City
	Medford City
	Melrose City
	Natick Town
	Newton City
	North Reading Town
	Reading Town
	Sherborn Town
	Somerville City
	Stoneham Town
	Sudbury Town
	Wakefield Town
	Waltham City
	Watertown Town
	Wayland Town
	Weston Town
	Wilmington Town
	Winchester Town
	Woburn City
	Norfolk County
	Bellingham Town
	Braintree Town
	Brookline town
	Canton Town
	Cohasset Town
	Dedham Town
	Dover Town
	Foxborough Town
	Franklin Town
	Holbrook Town
	Medfield Town
	Medway Town
	Millis Town
	Milton Town
	Meedham Town
	Norfolk Town
	Norwood Town
	Quincy City
	Randolph Town
	Sharon Town
	Stoughton Town
	Walpole Town
	Wellesely Town
	Westwood Town
	Weymouth Town
	Wrentham Town
	Plymouth County
	Abington Town
	Duxbury Town
	Hanover Town
	Hingham Town
	Hull Town
	Kingston Town
	Marshfield Town
	Norwell Town
	Pembroke Town
	Rockland Town
	Scituate Town
	Suffolk County
	Boston City
	Chelsea City
	Revere City
	Winthrop Town

SMSA	Cities and counties included in the SMSA
8. Fort Lauderdale-Hollywood, FL.	Fort Lauderdale City Hollywood City Broward County
9. Seattle-Everett, WA.	Everett City Seattle City King County Snohomish County
10. San Diego, CA.	San Diego City San Diego County
11. West Palm Beach-Boca Raton, FL.	Boca Raton City West Palm Beach City Palm Beach County
12. Anaheim-Santa Ana-Garden Grove, CA.	Anaheim City Garden Grove City Santa Ana City Orange County
13. Newark, NJ	Newark City Essex County Morris County Somerset County Union County

[FR Doc. 88-8149 Filed 4-13-88; 8:45 am]
BILLING CODE 4160-15-M

Maternal and Child Health Research Grants Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1988:

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: June 22-24, 1988, 9:00 a.m.

Place: Maryland Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open on June 22, 1988, 9:00 a.m.—10:00 a.m. Closed for remainder of meeting.

Purpose: To review research grant applications in the program area of maternal and child health administered by the Bureau of Health Care Delivery and Asssitance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health Program Coordination and Systems Development, who will report on program issues, Congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on June 22, at 10:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone requiring information regarding the subject Council should contact Gontran Lamberty, Dr.Ph.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6-17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2190.

Agenda Items are subject to change as priorities dictate.

Date: April 11, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88-8188 Filed 4-13-88; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1799]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: April 6, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Cooperative Membership Exhibit.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This form is needed to list the prospective cooperative members. It indicates the identification number of the property, the number of rooms, the unit cost, the down payment, and the monthly unit payment for each prospective member. The form is used as evidence of compliance of selling the property of project to an eligible cooperative group.

Form Number: HUD-93203.

Respondents: Individuals or Households.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 150.

Status: Reinstatement.

Contact: Richard S. Fitzgerald, HUD, (202) 426-0283; John Allison, OMB, (202) 395-6880.

Date: April 6, 1988.

Proposal: Reporting Requirements Associated with 24 CFR 203.508 and 235.1001-Providing Information.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Under the section 235 Program, lenders must provide the interest accounting to homeowners to allow them to deduct the amount of subsidy HUD paid on behalf of the homeowner. This information is needed to make certain homeowners do not claim more interest and/or taxes than they are actually entitled. HUD uses this requirement to make sure program funds are accounted for.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Respondents: Annually.

Estimated Burden Hours: 3,000.
Status: Extension.
Contact: Ann M. Sudduth, HUD, (202) 755–7330; John Allison, OMB, (202) 395–6880.

Date: April 6, 1988.

Proposal: Section 8 Existing Housing Allowances for Tenant Furnished Utilities and Other Services.
Office: Housing.
Description of the Need for the Information and its Proposed Use: The information, provided on this form, is needed and used by the Public Housing Agencies (PHAs) to establish a utility allowance for each locality (e.g., city, town, municipality) based on the average costs of utilities.
Form Number: HUD–52667.
Respondents: State or Local Governments.
Frequency of Respondents: On Occasion and Annually.
Estimated Burden Hours: 6,000.
Status: Extension.
Contact: Myra E. Newbill, HUD, (202) 755–6887; John Allison, OMB, (202) 395–6880.

Date: March 28, 1988.

[FR Doc. 88–8236 Filed 4–13–88; 8:45 am]
BILLING CODE 4210-01-M

Office of Assistant Secretary for Community Planning and Development

[Docket No. N–88–1793; FR–2493]

Application Submission Dates for HUD-Administered Small Cities Program for Fiscal Year 1988

AGENCY: Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises prospective applicants of the dates for submission of applications to the HUD office for the HUD-Administered Small Cities Program in New York under the Community Development Block Grant Program for Fiscal Year 1988.

FOR FURTHER INFORMATION CONTACT: Richard Kennedy, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755–6322. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 570.420(h)(3), the Department of Housing and Urban Development (HUD) has established dates for submission of applications for Small Cities grants in the State of New York for Fiscal Year 1988. Applications for funding under the Single Purpose and Comprehensive Grant provisions of the HUD-Administered Small Cities Program will be accepted only during the designated time period. Applications received in the HUD Office after the deadline must be postmarked no later than the May 16, 1988 submission deadline. Applications postmarked after that date are unacceptable and will be returned.

Applications for Single Purpose grants under 24 CFR 570.430, or applications for Comprehensive Grants under 24 CFR 570.426 for the State of New York are required to be submitted no earlier than May 2, 1988 and no later than May 16, 1988. Applicants in New York in the Counties of Sullivan, Ulster and Putnam and nonparticipating jurisdictions in the urban Counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Regional Office. All other nonentitled communities in the State of New York should submit their applications to the Buffalo Field Office.

The Application requirements related to this program have been approved by the Office of Management and Budget (OMB) and assigned approval number 2506–0060.

This action is exempt from the provisions of the National Environmental Policy Act under 24 CFR 50.20(k).

Dated: April 6, 1988.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 88–8237 Filed 4–13–88; 8:45 am]
BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–88–1800; FR–2507]

Interstate Land Sales Registration Division; Notice of Administrative Proceedings

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Lender Activities and Land Sales Registration, Interstate Land Sales Registration Division, HUD.

ACTION: Notice of proceedings and opportunity for hearing.

SUMMARY: The Interstate Land Sales Registration Division gives public notice of its attempt to serve upon certain persons (defined by statute (15 U.S.C. 1701) as individuals, unincorporated organizations, partnerships, associations, corporations, trusts, or estates) at their last known addresses, a notice requiring revisions to their Statement of Record. Service of this notice was attempted by mail and was found to be undeliverable. Therefore, in accordance with 44 U.S.C. 1508, the Department is publishing this Notice of Proceedings and Opportunity for Hearing in order to effect constructive notice upon the persons listed in the attached Appendix.

DATE: Requests for hearings should be filed on or before April 29, 1988.

ADDRESSES: Requests shall be filed with the docket Clerk for Administrative Proceedings, Room 10251, HUD Building, 451 Seventh Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Roger G. Henderson, Branch Chief, Land Sales Enforcement Branch, Department of HUD, Room 6278, Washington, DC 20410. Telephone: (202) 755–0502. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Notice of Proceedings and Opportunity for hearing is issued pursuant to the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1706(d)) and related regulations at 24 CFR 1710.45(b)(1) and 24 CFR 1710.215. The Department hereby serves the following Notice of Proceedings and Opportunity for Hearing to the persons listed in the attached Appendix:

NOTICE OF PROCEEDINGS AND OPPORTUNITY FOR HEARING

I

—Docket No. _____
—In the matter of: (subdivision) _____
_____
—(developer) _____
_____
—Representative Respondent _____
—OILSR No. _____

The Secretary in administering the Interstate Land Sales Full Disclosure Act of 1968, 15 U.S.C. 1701 et seq., and its Regulations finds his public files disclose that:

A. Respondent is a corporation organized under the laws of the State of _____ and has its principal office in _____.

B. The mailing address of Respondent's last known principal office or place of business is _____
_____

C. The Respondent filed a Statement of Record and Property Report for the above subdivision, located in _____ County, _____ State, which Statement of Record and Property Report, as amended, if any amendments have been filed, became effective on _____ and is still effective.

D. _____ is an authorized Representative of Respondent.

(Information for completing the above format follows. The captioned matters in the Appendix are listed alphabetically by subdivision in each State. Paragraph I of the Notice of Proceedings and Opportunity for Hearing includes the captions of the separate matters. Information for the completion of the captions of each of the matters is set out in columns 1 and 2 of the aforementioned Appendix. Information for Lines A, B and C above is set out in columns 3, 4 and 5 respectively of the Appendix. Information for Line D of Paragraph I is contained in the caption of the matter, and the same information is supplied in the last line of Column 1 of the Appendix. The entire Notice is completed by inserting the applicable information from the Appendix in the appropriate blanks of paragraph I. In this form it is constructively noticed that the Notice of Proceedings and Opportunity for Hearing is served upon the persons listed in column 1 of the Appendix.)

II

The Interstate Land Sales Registration Division (ILSRD) from its records or from other sources has obtained information which tends to show, and it so alleges, that the Statement of Record and Property Report of the subdivision captioned above include untrue statements of material fact, or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading, to wit:

The developer has failed to file amendments (including an annual report of activity) to comply with revised regulations of the Interstate Land Sales Registration Division or, alternatively, to file documentation establishing that no such amendments are necessary by the time required in 24 CFR 1710.23(a) and/or 1710.310 (1984 Edition), as amended by 49 FR 31366 (August 6, 1984) (as codified in the 1985 edition.

III

In view of the allegations contained in Part II above, the Secretary will provide an opportunity for a public hearing to determine:

A. Whether the allegations set forth in Part II are true and in connection therewith to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest and for the protection of purchasers pursuant to the Interstate Land Sales Full Disclosure Act.

IV

If the respondent desires a hearing, he shall file a request for hearing accompanied by an answer within 15 days after service of this Notice of Proceedings. Respondent is hereby notified that if he fails to file a response pursuant to 25 CFR 1720.240 and 1720.245 within 15 days after service of this Notice of Proceedings, Respondent shall be deemed in default, and the proceedings shall be determined against him, the allegations of which shall be determined to be true, and an order suspending the Statement of Record will be issued. The said order shall remain in effect until the Statement of Record and Property Report have been amended in accordance therewith, and thereupon the order shall cease to be effective.

V

Any request for hearing, answer, motion, amendment to pleadings, offer of settlement or correspondence forwarded during the pendency of this proceedings shall be filed with the Docket clerk for Administrative Proceedings, Room 10251, HUD Building, 451 Seventh Street SW., Washington, DC 20410. All such papers shall clearly identify the type of matter and the docket number as set forth in this Notice of Proceedings.

VI

It is hereby ordered, that upon request of the Respondent a public hearing for the purpose of taking evidence on the questions set forth in Part III hereof be held before an Administrative Law Judge, HUD Building, 451 Seventh Street SW., Washington, DC 20410, at 10:00 a.m. on the 30th day after receipt of the answer or at such other time as the Secretary or a designee may fix by further order.

This Notice of Proceedings shall be served upon the Respondent pursuant to 24 CFR 1720.170 and/or 44 U.S.C. 1508.

Date: April 6, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

In the matter of (subdivision) developer, representative and title; respondent	OILSR No. and land sales enforcement branch docket No.	State of organization and location of principal office	Last known mailing address	Location of subdivision (county, State) and effective date
(1)	(2)	(3)	(4)	(5)
Arizona: Desert Vista Place, Richard G. Davis and Carolyn E. Davis, sole proprietors.	C 0-6385-02-1130, M-87-037	Arizona; Scottsdale, AZ	10208 North 87th Street, Scottsdale, AZ 85258.	Maricopa County, AZ; Feb. 7, 1985.
Colorado: Douglas Mountain Ranch, Donald McClure, sole proprietor.	0-05104-05-0528	Colorado; Denver, CO	6780 East Cedar, Apt. 202, Denver, CO 80224.	Jefferson County, CO; May 8, 1978.
Illinois: Valley of the Pines Sections 1 and 2, Meister Development Corporation, Robert L. Meister, president.	0-4873-15-76, M-88-029	Indiana; Fort Wayne, IN	3201 Doe Run Trail, Fort Wayne, IN 46825; 418 East Berry Street, Fort Wayne, IN 46802.	Steuben County, IN; May 3, 1977

[FR Doc. 88-8238 Filed 4-13-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Priority System of Ranking Education Construction Projects

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of a priority system established to rank new school construction.

This notice is published pursuant to guidelines entitled "Instructions and Applications for New School Construction," dated November 1987, recently made available through the Office of Construction Management (OCM), as noticed in 53 FR 3080, February 3, 1988, which stated all applications will be reviewed and ranked. In accordance with criteria developed from the guidelines, OCM has developed criteria which established a priority system for use in ranking new school construction applications. These criteria are as follows:

A. The percentage of "unhoused" students is the starting point for reviewing applications for new construction. Students are considered unhoused:

1. When the condition of the existing school facility is such that it can no longer be used without major repairs, renovations or complete replacement.

2. When the school can no longer meet the space requirements of the Bureau approved educational program.

3. When the Bureau approved average daily membership (ADM) of the school exceeds the design capacity of the facility.

4. When seats are not available in any other school (Bureau, Tribal, Contract, Private or public) within a one hour's bus ride of home.

B. Those applications for facilities for "unhoused" students will be evaluated and ranked on the basis of the additional criteria listed below:

1. Cost and/or education program benefits accruing from consolidation of Bureau, Tribal, Contract, or public schools.

2. Compliance with Bureau approved attendance areas including other Bureau schools and public, private and contract schools, as demonstrated by historical data for past five years.

3. Demonstrated and supportable enrollment history for past ten years and enrollment trends for next five years or more, if available.

4. Severity of non-compliance of existing facilities with applicable Federal, Tribal, or State health and safety standards.

After ranking, a feasibility study will be required to analyze the cost benefits of replacement versus renovation.

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management, Department of the Interior, 18th & C Streets NW., Mail Stop 2415, Washington, DC 20240, (202) 343-3403.

Dated: March 21, 1988.

Rick Ventura,

Assistant Secretary, Policy, Budget & Administration

[FR Doc. 88-8781 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[AA-680-08-4132-02]

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Multiple Use Mining, Mining Claims Under the General Mining Laws.

Abstract: Several statutes affecting the location of operations on, patenting of, and contesting of mining claims or sites on the public lands require certain information to be filed with the Bureau of Land Management if the owners of the mining claims or sites wish to exercise their rights under the mining laws. The Acts of August 11, 1955 and April 8, 1948 (30 U.S.C. 621) require that a notice or certificate of location and annual assessment work be filed with the Bureau. Section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)) requires an operator to file a plan of operations with the Bureau prior to operating in a Wilderness Study Area. The Stockraising Homestead Act of 1916 (43 U.S.C. 299) requires that an operator on the reserved mineral interest of the United States on these lands provide the Bureau with either:

(1) An agreement for compensation and damages between him and the surface owner.

(2) A waiver from the surface owner.

(3) A bond, not less than $1,000 as surety against damages to the property. The Act of May 10, 1872 (30 U.S.C. 22 *et seq.*) provides for the patenting of a mining claim or site and for adverse claims against such before the Bureau. Information specified in the act must be provided to the Bureau if the owner wishes to patent or adverse another claimant.

Bureau Form Number: 3814-1.

Frequency: Respondents only file once to claim the benefits of the various statutes.

Description of Respondents:

CFR

3730	250
3802	30
3814	25
3821	400
3860	75
3872	250

Annual Burden Hours:

CFR

3730	21
3801	250
3814	13
3821	33
3860	3000
3872	5000

Bureau Clearance Officer: Richard Iovaine 202-653-8853.

Date: January 26, 1988.

Adam A. Sokoloski,

Acting Assistant Director, Energy and Mineral Resources.

[FR Doc. 88-8117 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-84-M

[WY-040-08-4111-09; W-66212]

Availability of Final Environmental Impact Statement; Record of Decision; Rock Springs and Bridger-Teton, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Amoco Sohare Creek Unit Exploratory Oil Well No. 1-35 Final Environmental Impact Statement (EIS) and Record of Decision (ROD), and Reviewer Comments and Agency Responses Document.

SUMMARY: The Bureau of Land Management (BLM), Rock Springs District and the U.S. Forest Service (FS), Bridger-Teton National Forest announce the availability of the Amoco Sohare Creek Unit Exploratory Oil Well Final EIS and ROD. Both documents are bound together. The final EIS, in accordance with 40 CFR Parts 1500-1508, analyzes the impacts of Amoco Production Company's proposal to drill an exploratory oil well in northwestern Wyoming. The purpose is to determine if hydrocarbons are present within the Sohare Creek Unit. If hydrocarbons are encountered, production potential from the one well would be evaluated.

The ROD outlines the decision and rationale (including key management considerations) for the Sohare Creek Unit Exploratory Oil Well. Because of the volume of comments received on the Draft EIS, a separate document containing all the comments and agency responses has been prepared.

DATES: Since the ROD is issued at the same time as the final EIS, a concurrent 30-day period is provided before any actions are implemented. The 30-day period commences with the filing of the final EIS and Record of Decision with the Environmental Protection Agency (EPA).

ADDRESSES: Copies of the final EIS, ROD, and Reviewer Comments documents are available at the following locations: Bureau of Land Management, Rock Springs District Office, Highway 191 North, P.O. 1869, Rock Springs, Wyoming 82902-1869, (703) 382-5350. U.S. Forest Service, Bridger-Teton National Forest, P.O. Box 1888, Jackson, Wyoming 83001, (307) 733-2752.

FOR FURTHER INFORMATION CONTACT: Bill McMahan, Project Co-Leader, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350. Al Reuter, Project Co-Leader, U.S. Forest Service, Bridger-Teton National Forest, P.O. Box 1888, Jackson, Wyoming 83001, (307) 733–4755.

SUPPLEMENTARY INFORMATION: Amoco Production Company or Riverton, Wyoming, proposes to drill and produce from an 11,050-foot exploratory oil well on the Jackson Ranger District, Bridger-Teton National Forest. The proposal is located in the Sohare Creek drainage, a tributary to the Gros Ventre River, Teton County, Wyoming. The drill site is located approximately 27 air miles northeast of Jackson, Wyoming, in the SW¼ of Section 35, T. 43 N., R. 112 W. A worker campsite to house drilling-related personnel on location is planned.

Alternatives to the proposed action include two alternate routes of road access to the proposed drill site; a helicopter mobilization and support alternative; and the alternative of "No Action."

Public comments received during scoping and the review of the draft EIS identified resources that could be affected by construction, drilling, and production activities as: Wildlife (particularly grizzly bear, elk calving, and historic elk migrations), primitive values (new road into an area currently unroaded), recreation (established snowmobiling), big game hunting and outfitter/guide operations and soil and water quality (erosion and stram sedimentation from occupancy of slopes in excess of 40 percent of unstable soils or within 500 feet of streams or 400 feet of springs).

Donald H. Sweep,

District Manager.

[FR Doc. 88–8131 Filed 4–13–88; 8:45 am]

BILLING CODE 4310-22-M

[CA-067-08-4331-10]

Prohibition Against Collection of Fossils, Gems and Minerals; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Prohibition against collection of gems and minerals within the Indian Pass Area of Critical Environment Concern (ACEC) and prohibition against collection of vertebrate and invertebrate fossils within the Coyote Mountains ACEC. Both areas are within Imperial County, California.

SUMMARY: This notice affects public lands under the administrative responsibility of the El Centro Resource Area, California Desert District. The area includes public lands in the San Bernardino Meridian.

San Bernardino Meridian

Indian Pass ACEC

T. 13 S., R. 21 E.,
Sec. 20;
Sec. 21;
Sec. 27;
Sec. 28;
Sec. 29.

Coyote Mountains

T. 15 S., R. 9 E.,
Sec. 27, S½;
Sec. 28, S½;
Sec. 29, S½;
Sec. 30, S½;
Sec. 31;
Sec. 32;
Sec. 33;
Sec. 34;
Sec. 35, SW¼.

San Bernardino Meridian

T. 16 S., R. 9 E.,
Sec. 3, N½;
Sec. 4, N½;
Sec. 5, N½.

The above listed lands located within the Indian Pass ACEC are hereby closed to the collection of gems and minerals. The final management plan, which was subject to public review during the draft stage, calls for a prohibition of recreational or commercial collection of gem stones, rocks, fossils, and minerals from within the ACEC. The restriction against collection was effective with finalization of the Indian Pass ACEC plan on June 19, 1987, and will remain in effect until rescinded or modified by the authorized officer. This prohibition is designed to protect archaeological resources and to prevent damage to pristine desert pavement surfaces.

The above listed lands located within the Coyote Mountains are hereby closed to the collection of vertebrate and invertebrate fossils. This area includes the Coyote Mountains Fossil Site ACEC management plan. This plan, which was subject to public review during the draft stage, calls for expansion of important fossil localities. The above listed lands in the Coyote Mountains are included in a Desert Plan amendment to revise the ACEC boundaries.

The final ACEC plan also calls for a prohibition against collection of invertebrate fossils from the entire ACEC. This prescription clearly referred to the new boundaries once they are established. Limited collection is still possible through specific written authorization from the Area Manager, El Centro Resource Area. The restriction against the collection of invertebrate fossils was effective with formalization of the Coyote Mountains ACEC management plan on January 8, 1988, and will remain in effect until rescinded or modified by the authorized officer. This restriction is designed to protect rare and unusual paleontological resources found in the Coyote Mountains.

Notices or signs will be posted in the areas restricted and maps showing the exact locations of each ACEC are available with the respective management plan. Copies of both plans are available from the El Centro, CA 92243. Any person who knowingly and willfully violates these prohibitions may be subject to a $1,000 fine or imprisonment for not longer than 12 months, or both, under authority of 43 CFR 8364.1(a).

FOR FURTHER INFORMATION CONTACT: Area Manager, Bureau of Land Management, El Centro Resource Area, 333 S. Waterman, El Centro, California 92243, 619–352–5842.

Dated: April 6, 1988.

James L. Williams,

Acting District Manager.

[FR Doc. 88–8139 Filed 4–13–88; 8:45 am]

BILLING CODE 4310-40-M

[CA-050-4410-04]

Advisory Council Meeting; Ukiah District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting, Ukiah, California, District Advisory Council.

SUMMARY: Prusuant to Pub. L. 94–579 and 43 CFR Part 1780, the Ukiah District Advisory Council will meet in Redding, California, May 19–20, 1988, to discuss issues and alternatives to be addressed in a resource management plan for public lands in the Bureau's Redding Resource Area.

DATES: The meeting will begin at 10:00 a.m. Thursday, May 19, 1988, and adjourn at 3:00 p.m. Friday, May 20, 1988.

ADDRESS: The meeting will be held at the Bureau of Land Management Office, 355 Hemsted Drive, Redding, California. A portion of Thursday and Friday will be spent visiting some of the public land parcels to be considered in the resource management plan.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Managmeent, 555 Leslie Street, Ukiah, California 95482, (707) 462–3873.

SUPPLEMENTARY INFORMATION: The Redding Resource Area is responsible

for the management of approximately 230,000 acres of public land scattered throughout the five-county area of Siskiyou, Trinity, Shasta, Tehema, and Butte. Predominant uses of the public lands are timber harvesting, grazing, mining, wildlife habitat, recreation, and rights-of-way.

The meeting is open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 1:00 p.m. Thursday, May 19, 1988. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: April 7, 1988.

Alfred W. Wright,

District Manager.

[FR Doc. 88-8129 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-40-M

Oil and Gas Lease Sale; Alaska

ACTION: Notice of sale.

SUMMARY: The purpose of this notice is to announce that a Competitive Protective Oil and Gas Lease Drainage Sale No. 882 will be held on May 24, 1988. The lands are within the Kuparuk River Unit, North Slope Borough, Alaska, and are offered for lease under section 17 of the Mineral Leasing Act of 1920 as amended and supplemented (30 U.S.C. 181 *et seq.*).

FOR FURTHER INFORMATION CONTACT: Kay F. Kletka, 907-271-3791, Bureau of Land Management, 701 C Street, Box 13, Anchorage, AK 99513.

SUPPLEMENTARY INFORMATION: Notice is hereby given that at 10 a.m. on May 24, 1988, certain lands containing 678.2 acres within the Kuparuk River Unit, North Slope Borough, Alaska will be offered by oral bid to the highest responsible qualified bidder in a competitive protective oil and gas lease sale.

A detailed statement of the terms and conditions of the lease offering and how and where to bid may be obtained from the BLM at the address shown above.

John Santora,

Deputy State Director for Mineral Resources.

[FR Doc. 88-8123 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-020-08-4212-13; A-23217]

Realty Action; Public Land Exchange; Mohave and Yavapai Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The notice of realty action published on Monday, March 21, 1988, in **Federal Register** document 88-6071, page 9150, is corrected as follows:

1. Page 9151, column 1, line 40 should read T. 12 N., R. 7 W.; and

2. Page 9151, column 3, line 25 should include section 13.

FOR FURTHER INFORMATION CONTACT: Mike Berch, Kingman Resource Area, (602) 757-3161.

Dated: April 5, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88-8140 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ 020-08-4212 11; A 22592]

Realty Action; Recreation and Public Purposes (R&PP), Act Classification; Arizona

BLM proposes to study the compatibility of applications by Maricopa County and the Ocotillo Botanical Preservation and Hiking Club, Inc. to develop public land for recreation and educational purposes related to parks, hiking trails and native plant interpretation. A determination will be made to lease and/or patent the following described land:

Gila and Salt River Meridian, Arizona

T. 3 S., R. 7 E.,
Sec. 4, E½SW¼SE¼;
Sec. 5, SE¼SW¼;
Sec. 8, E½NW¼, SW¼NW¼, W½SW¼;
Sec. 14, SW¼SW¼;
Sec. 17, NW¼NW¼;
Sec. 22, NE¼, E½SE¼;
Sec. 23, N½, SW¼, NW¼SE¼;
Sec. 24, W½NW¼, SE¼NW¼.

Containing 1,220 acres, more or less.

The land has been examined and found suitable for classification for recreation and public purposes under the provisions of the R&PP Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869; 869-4) and the regulations contained in 43 CFR Part 2740 and 43 CFR Part 2912.

In addition, the land is determined to meet general classification criteria of 43 CFR 2410.1(a-d) and specific public purposes classification criteria of 43 CFR 2430.4(c).

Classification of this land under the provisions of the above cited R&PP Act segregates them from appropriations under the public lands laws and the mining laws, but not from applications under the mineral leasing laws or the R&PP Act for a period of eighteen months from the date this notice is published in the **Federal Register** (43 CFR 2741.5(2)).

Detailed information concerning this classification is available from the Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Phoenix District Manager.

Dated: April 8, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88-8143 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-940-08-4212-13; A-22308]

Arizona, Exchange of Public and Private Lands in Mohave County

April 5, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Lake Sections, Inc. The United States transferred 128.56 acres in Mohave County and Lake Sections, Inc. conveyed 1,280.00 acres in Mohave County.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: On March 23, 1988, the Bureau of Land Management transferred the following described land by Deed No. AZ-88-003, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 20 W.,
Sec. 9, lots 6 and 7, S½S½N½N½NW¼SW¼, S½N½NW¼SW¼, S½NW¼SW¼, SW¼SW¼.

The area described comprises 128.56 acres in Mohave County.

In exchange the following described land was conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 24 N., R. 22 W.,
Sec. 12, all;
Sec. 13, all.

The area described comprises 1,280.00 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local

government officials of the exchange of public and private land.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-8134 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-940-08-4212-13; A-22677]

Arizona; Exchange of Public and Private Lands in La Paz and Mohave Counties

April 5, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Robert E. Crowder, III and Robert E. Crowder, Jr. The United States transferred 771.46 acres in La Paz County and accepted title on 5,078.93 acres of private land in Mohave County.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: On March 30, 1988, the Bureau of Land Management transferred the following described land by Patent No. 02-88-0026 and Deed No. AZ-88-004, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 3 N., R. 15 W.,
  Sec. 2, lots 1, 2, 9 and 12.
T. 4 N., R. 15 W.,
  Sec. 25, S½;
  Sec. 36, W½.

The area described comprises 771.46 acres in La Paz County.

In exchange the surface in the following described land was conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 12 N., R. 19 W.,
  Sec. 11, SW¼SE¼.
T. 14 N., R. 18 W.,
  Sec. 1, lots 3 and 4, N½SW¼;
  Sec. 5, lots 1 to 4 incl., S½N½, S½;
  Sec. 9, N½NE¼, E½SW¼NE¼, SW¼ SW¼NE¼, SE¼NE¼, NW¼, S½;
  Sec. 11, E½;
  Sec. 13, all;
  Sec. 15, all;
  Sec. 23, all.
T. 15 N., R. 18 W.,
  Sec. 31, lot 1.
T 15 N., R. 19 W.,
  Sec. 19, W½NE¼;
  Sec. 21, SW¼NE¼, NE¼NW¼, SE¼ SW¼, N½SE¼;
  Sec. 23, E½W½;
  Sec. 25, NW¼NE¼, W½SW¼NW¼, SE¼ NW¼, SW¼NW¼, S½SW¼, SE¼;
  Sec. 29, E½NE¼SE¼;
  Sec. 31, N½NE¼SW½, NW¼NW¼SE¼, N½SE¼SE¼;
  Sec. 33, S½SW¼NE¼, S½SE¼SW¼, N½ NW¼SE¼;
  Sec. 35, NW¼, SE¼NE¼SW¼, W½SW¼.
T. 19 N., R. 19 W.,
  Sec. 23, SW¼.

The area described comprises 5,078.93 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-8130 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-08-4212-12; CA-21579]

California Desert District and Ukiah District, Realty Action; Exchange of Public and State Lands in Imperial, Inyo, Mendocino, Riverside, San Bernardino and Trinity Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action CA-21579, exchange of public and State lands.

SUMMARY: The following described lands in Mendocino and San Bernardino Counties have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, California

T.17N., R.12W.,
  Sec. 2: NE¼SE¼;

San Bernardino Meridian, California

T.2N., R. 5E.,
  Sec. 1: lot 2 of NE¼, lot 2 of NW¼;
  Sec. 4: NE¼NE¼, NE¼NW¼NE¼, E½SE¼NE¼;
T.5N., R.3W.,
  Sec. 6: S½SE¼;
T.6N., R.3W.,
  Sec. 10: NW¼SW¼;
  Sec. 21:NW¼;
  Sec. 26: E½NE¼;
  Sec. 32: W½NW¼, NW¼SW¼, N½SW¼SW¼, SW¼SW¼SW¼;
T.6N., R.4W.,
  Sec. 24: E½SW¼SW¼, SE¼SW¼;
T.8N., R.4W.,
  Sec. 19: W½NE¼, Lot 1 of NW¼;
T.9N., R.1E.,
  Sec. 23: NE¼SW¼;
  Sec. 24: S½SE¼;
T.9N., R.2E.,
  Sec. 19: S½N¼;
  Sec. 26: S½S½;
  Sec. 27: S½SE¼;
  Sec. 30: S½NE¼, S½ lot 1 of NW¼, S½ lot 2 of NW¼, N½ lot 1 of SW¼, N½ lot 2 of SW¼, N½SE¼;
  Sec. 34: N½NE¼, NE¼NW¼;
  Sec. 35: N½N½;
T.9N., R.3E.,
  Sec. 31: lots 3 through 66, S½NE¼;
T.9N., R.1W.,
  Sec. 19: E½E½NE¼;
  Sec. 20: All;
T.9N., R.2W.,
  Sec. 8: NE¼SW¼;
T.9N., R.3W.,
  Sec. 26: NW¼NE¼, N½SW¼NE¼NE¼, S½NW¼, NW¼SW¼, N½SW¼SW¼, SW¼SW¼SW¼;
T.10N., R.1E.,
  Sec. 31: S½NE¼, SE¼;
  Sec. 32: E½NW¼;
  Sec. 34: NE¼, S½NW¼, N½S½;
  Sec. 35: N½, N½S½;

Containing 45,362.60 acres, more or less.

In exchange for these lands, the State Lands Commission, State of California, has offered the following lands within a variety of special management areas identified by the Bureau of Land Management:

Mount Diablo Meridian, California

T.25N., R.12W.,
  Sec. 36: Tract ;74; excepting 80 acres previously conveyed

San Bernardino Meridian, California

T.2N., R.22E.,
  Sec. 36: All;
T.4N., R.18E.,
  Sec. 36: All;
T.5N., R.5E.,
  Sec. 16: All;
T.5N., R.20E.,
  Sec. 36: All;
T.6N., R.3E.,
  Sec. 16: All;
T.7N., R.4E.,
  Sec. 36: lots 1 through 4, W½E½, W½;
T.8N., R.12E.,
  Sec. 36: All;
T.8N., R.13E.,
  Sec. 16: N½, SW¼, S½SE¼;
T.9N., R.11E.,
  Sec. 16: All;
  Sec. 36: All;
T.9N., R.12E.,
  Sec. 36: lots 1 through 4, W½E½, W½;
T.10N., R.11E.,
  Sec. 16: All;
  Sec. 36: All;
T.10N., R.12E.,
  Sec. 16: All;
  Sec. 36: All;
T.11N., R.11E.,
  Sec. 16: All;
T.11N., R.12E.,
  Sec. 16: All;
T.11N., R.15E.,
  Sec. 36: Tract 44;
T.11N., R.16E.,
  Sec. 36: Tract 47;
T.12N., R.11E.,
  Sec. 36: All;
T.12N., R.14E.,

Sec. 36: All;
T.12N., R.18E.,
Sec. 16: All;
T.13N., R.15E.,
Sec. 16: All;
T.13N., R.16E.,
Sec. 16: All;
Sec. 36: All;
T.14N., R.12E.,
Sec. 36: All;
T.14N., R.13E.,
Sec. 16: All;
T.14N., R.15E.,
Sec. 36: All;
T.15N., R.9E.,
Sec. 36: All;
T.15N., R.12E.,
Sec. 36: All;
T.15N., R.16E.,
Sec. 36: All;
T.15N., R.14E.,
Sec. 36: All;
T.16N., R.10E.,
Sec. 36: lots 1 through 4, N½S½, N½;
T.17N., R.12E.,
Sec. 36: All;
T.17N., R.12E.,
Sec. 36: lots 1 through 6, N½NE¼, SE¼;
T.19N., R.10E.,
Sec. 16: All;
T.24N., R.4E.,
Sec. 16: All;
T.8S., R.20E.,
Sec. 16: All;
T.12S., R.16E.,
Sec. 36: All;
T.13S., R.17E.,
Sec. 36: NW¼, SW¼, SE¼; excepting 17.13 acres previously conveyed
T.13S., R.17½E.,
Sec. 36: All;
T.14S., R.18E.,
Sec. 16: All;
Sec. 26: NE¼, N½SE¼, SE¼SE¼;
Containing 26,998.02 acres, more or less.

The public land to be conveyed will be subject to the following terms and conditions:

A. Reservation to the United States: A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

B. Third Party Rights: Public lands conveyed will be subject to the following:

1. Those rights for public highways established under Revised Statute 2477 (foremerly 43 U.S.C. 932).

2. Those rights for a railroad and telegraph line granted to Atchison Topeka and Santa Fe Railway Company by approved map pursuant to the Act of July 27, 1866 (14 Stat. 292).

3. Those rights for a railroad line granted to Atchison Topeka and Santa Fe Railway Company by Right-of-Way No. R–01540 pursuant to the Act of March 3, 1875 (formerly 43 U.S.C. 934–939).

4. Those rights, if valid, for a railroad line granted to San Pedro, Los Angeles and Salt Lake Railway Company, its successors or assigns, by Right-of-Way No. R–01604 pursuant to the Act of March 3, 1875.

5. Those rights, if valid, for ditches granted to Southern California Improvement Company, its successors or assigns, by Right-of-Way No. S–3427 pursuant to the Act of March 3, 1891, as amended (formerly 43 U.S.C. 946–949).

6. Those rights for a flood control channel granted to the County of San Bernardino by Right-of-Way No. R–03157 pursuant to the Act of March 3, 1891, as amended.

7. Those rights for electric transmission lines and distribution lines granted to Southern California Edison Company by Right-of-Way Nos. LA–0152805, LA–0159695, R–324, R–1537, R–3529 and R–4879 pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).

8. Those rights for an underground coaxial communications cable granted to American Telephone and Telegraph Company by Right-of-Way No. R–01840 pursuant to the Act of March 4, 1911, as amended.

9. Those rights for telephone lines granted to Continental Telephone Company by Right-of-Way Nos. LA–028932, LA–0170417, R–01554, R–126 and R–322 pursuant to the Act of March 4, 1911, as amended.

10. Those rights for underground gas pipelines granted to Pacific Gas and Electric Company by Right-of-Way Nos. LA–0118349, LA–0140110 and LA–0162199 pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 185).

11. Those rights for underground gas pipelines granted to CalNev Pipeline Company by Right-of-Way Nos. LA–0168999 and R–2537 pursuant to the Act of February 25, 1920, as amended.

12. Those rights for an underground oil pipeline granted to All American Pipeline Company by Right-of-Way No. CA–14013 pursuant to the Act of February 25, 1920, as amended.

13. Those rights for public highways and public highway material site granted to the California State Department of Transportation by Right-of-Way Nos. R–01727, R–01735 and LA–0145975 pursuant to the Act of November 9, 1921 (formerly 23 U.S.C. 1–3).

14. Those rights for an electric transmission line granted to the City of Los Angeles, Department of Water and Power by Right-of-Way No. LA–052174 pursuant to the Act of December 21, 1928 (43 U.S.C. 617d).

15. Those rights for a public highway and public highway material site granted to the California State Department of Transportation by Right-of-Way Nos. R–05755 and R–05927 pursuant to the Act of August 27, 1958 (23 U.S.C. 317).

16. Those rights for an underground water pipeline granted to Bighorn Mountains Water Agency by Right-of-Way No. CA–5232 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

17. Those rights for underground telephone cables granted to Continental Telephone Company of California by Right-of-Way Nos. CA–2915 and R–05135 as amended, pursuant to the Act of October 21, 1976.

18. Those rights for an electric transmission line granted to Intermountain Power Agency by Right-of-Way No. CA–8294 pursuant to the Act of October 21, 1976.

19. Those rights for roadways granted to the County of San Bernardino by Right-of-Way Nos. CA–9315 and CA–13200 pursuant to the Act of October 21, 1976.

20. Those rights for an underground water pipeline granted to John VanLeeuwen by Right-of-Way No. CA–17644 pursuant to the Act of October 21, 1976.

21. Those rights for a roadway, conveyor system and underground water pipeline granted to McKee Products Inc. by Right-of-Way No. CA–18112 pursuant to the Act of October 21, 1976.

22. Those rights for an electric distribution line granted to Southern California Edison by Right-of-Way No. CA–18906 pursuant to the Act of October 2, 1976.

23. Those rights for an underground fiber-optic communications cable and regeneration station granted to William Telecommunications Company by Right-of-Way No. CA–19143 pursuant to the Act of October 21, 1976.

24. Those rights for an underground fiber-optic communications cable granted to U.S. Sprint Communications Company by Right-of-Way No. CA–20105 pursuant to the Act of October 21, 1976.

All minerals in the State and public lands will be exchanged. The purpose of this exchange is to acquire lands with significant resource and recreational values and to create more manageable public land units in the following areas:

California Desert District

East Mojave National Scenic Area (San Bernardino County)
Greenwater Canyon Area of Critical Environmental Concern (Inyo County)
Mule Mountain Long-Term Visitor Area (Riverside County)
Imperial Sand Hills Recreation Area (Imperial County)
Johnson Valley OHV Recreation Area (San Bernardino County)

Mammoth Wash OHV Recreation Area (Imperial County)

Ukiah District

Yolla-Bolly Middle Eel Wilderness (Mendocino and Trinity Counties)

Disposal of the fragmented and isolated public land tracts selected by the State of California is consistent with the management objectives of the California Desert Plan and the East Mendocino Management Framework Plan. The exchange would benefit the people of the State of California and the general public. The public interest would be well served by making the exchange.

As provided in 43 CFR 2201.1(b), the publication of this Notice in the **Federal Register** shall segregate, subject to existing valid rights, the public lands described herein from all other forms of appropriation under the public land laws, including the mining laws and mineral leasing laws.

The segregative effect will terminate upon issuance of a conveyance document, upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of this publication, whichever occurs first.

The values of the lands to be exchanged are approximately equal. Equalization of values will be achieved by acreage adjustment.

Additional information concerning the exchange is availabe at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619–256–3591) and the California Desert District Office, 695 Spruce Street, Riverside, CA 92507.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, at the above address.

Date: April 4, 1988.

H. W. Riecker,

Acting District Manager.

[FR Doc. 88–8119 Filed 4–13–88; 8:45 am]

BILLING CODE 4310–40–M

[OR–090–08–4212–13:GP8–120:OROR 44047]

Realty Action; Exchange; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of public lands in Lane County, Oregon.

SUMMARY: The following described public lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 19 S., R. 1 E.,
Sec. 26: NW¼NW¼.
T. 21 S., R. 1 W.,
Sec. 17 Lot 1.
T. 22 S., R. 1 W.,
Sec. 7: Lot 27.
T. 22 S., R. 2 W.,
Sec. 12: SW¼NE¼, S½NW¼.
Comprising 230.82 acres, more or less.

Final determination on disposal will await completion of an environmental assessment.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to the Federal Land Policy and Management Act of 1976.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

DATE: For a period of up to and including May 31, 1988, interested parties may submit comments to the Eugene District Manager at the address shown below.

ADDRESSES: Detailed information concerning the proposed exchange is available from the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683–6403.

Date of Issue: April 7, 1988.

Ronald L. Kaufman,

District Manager.

[FR Doc. 88–8113 Filed 4–13–88; 8:45 am]

BILLING CODE 4310–33–M

[ES–940–08–4520–13; (ES–038367, Group 172)]

Florida; Filing of Plats of Subdivision of Sections 1, 3, 6, 10, 25, 26, 30, 32 and 35

April 5, 1988.

1. The plat, in nine sheets, of the survey of the subdivision of sections 1, 3, 6, 10, 25, 26, 30, 32 and 35 and the metes-and-bounds survey of certain parcels in sections 6, 25, 26 and 35, Township 15 South, Range 24 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 20, 1988.

2. The survey was made at the request of the Forest Service.

3. All inquiries or protests concerning the technical aspects of the survey of subdivisions must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 20, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–8145 Filed 4–13–88; 8:45 am]

BILLING CODE 4310–GJ–M

[OR–943–08–4520–12: GP8–115]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Williamette Meridian, Oregon

T. 29 S., R. 11 W.,
T. 8 S., R. 19 E.

The above listed plats were accepted February 12, 1988 and officially filed February 16, 1988.

T. 26 S., R. 14 E.,
T. 28 S., R. 12 W.

The above listed plats were accepted March 4, 1988 and officially filed March 21, 1988.

T. 22 S., R. 9 W., Accepted March 25, 1988 and officially filed March 29, 1988.

Washington

T. 38 N., R. 1 E., Accepted February 12, 1988 and officially filed February 16, 1988.
T. 26 N., R. 17 E., Accepted February 26, 1988 and officially filed February 29, 1988.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, OR 97208.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: April 7, 1988.

[FR Doc. 88–8125 Filed 4–13–88; 8:45 am]

BILLING CODE 4310–33–M

[OR-943-08-4520-12: GP8-116]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described land will be officially filed at 8:30 a.m., May 27, 1988, in the Oregon State Office, Portland, Oregon.

Willamette Meridian, Washington

T. 34 N., R. 20 E.

The plat represents a dependent resurvey of a portion of the east boundary, a portion of the boundaries of Homestead Entry Survey No. 217 and Homestead Entry Survey 218, Tract B, designed to restore the corners in their true original locations according to the best available evidence, and the metes-and-bounds survey of Tract 37 in unsurveyed T. 34 N., R. 20 E., Willamette Meridian, Washington. The plat returns areas of unsurveyed land totaling 135.06 acres.

The land encompassed in this survey is located about five miles west of the town of Winthrop, Washington. Access is by way of County Road No. 1117 and Forest Service Road No. 500, from the south, and County Road No. 9120 and Forest Service Road No. 100, from the northwest.

The land is rolling hills, bisected by Wolf Creek, which flows south-easterly through the area. Elevations range from 2,900 feet above sea level near Corner No. 2, Homestead Entry No. 217, to 2,300 feet above sea level near Wolf Creek on the east boundary of the township.

The timber consists primarily of ponderosa pine and fir, with cedar and aspen located along the creek bottom. Undergrowth consists of sagebrush, deer brush, and native grasses.

The principal use of the area is timber harvesting and cattle grazing. There are numerous cross-country ski trails in the area.

There were no mineral deposits noted along the lines surveyed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, OR 97208.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: April 7, 1988.

[FR Doc. 88-8126 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-33-M

[ID-943-08-4220-10; I-7317]

Partial Termination of Proposed Withdrawal and Reservation of Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Withdrawal application termination.

SUMMARY: This notice partially terminates a withdrawal application filed by the Forest Service on lands within ¼ mile of either side of the Lower Salmon River. The application is being relinquished, in part, because the lands are adequately protected by the "Wild Segment" of the Salmon Wild and Scenic River, the Frank Church River of No Return Wilderness and the Gospel Hump Wilderness area designations. The lands involved have been and will continue to be segregated from the mining and mineral leasing laws by virtue of the Wild and Scenic River and Wilderness Area designations. Accordingly, this action involves a record-clearing procedure, only.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

Notice of an application, serial number I-7317, for withdrawal and reservation of lands was posted in the land office records October 1, 1973. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR Part 2091, such lands will be at 9:00 a.m. on May 2, 1988, relieved of the segregative effect of the above-mentioned application.

The lands in this notice of termination are all public lands located within ¼ mile of either side of the Lower Salmon River from Wheat Creek to Long Tom Bar within the following-described townships:

T. 23 N., R. 14 E.
T. 24 N., Rgs. 5, 6, 7, 8, 11, 12, 13 and 14 E.
T. 25 N., Rgs. 5, 6, 8, 9, 10, 11 and 12 E.
T. 26 N., Rgs. 10 and 11 E.

The areas described are located within Idaho and Lemhi Counties.

William E. Ireland,

Chief, Realty Operations Section.

Date: April 6, 1988.

[FR Doc. 88-8121 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-08-4220-11; I-2110]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that a 16.15 acre withdrawal of National Forest System lands for the State Creek Recreation Area continue for an additional 20 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received by July 13, 1988.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 4580, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land is described as follows:

Boise Meridian

T. 27 N., R. 21 E., unsurveyed,
Sec. 34, a tract of land described as follows:

Beginning at Corner No. 8 of the Gold Nugget placer claim, MS 3303, identical to Corner No. 8 of HES 94, a granite rock 8" × 8" × 6" above ground, with "X" chiseled on top. From this initial point by M and B: N 86° 23' W. 775' to the east right-of-way boundary U.S. Highway 93; thence N 0° 21' W. 1690' along highway right-of-way to a point on the withdrawal boundary between Corner No. 3 of the withdrawn area and Corner No. 10, Gold Nugget Placer claim, MS 3303; thence N 72° 29' E. 116' to Corner No. 10, Gold Nugget placer claim, MS 3303; thence S 7° 21' E. 277.62' to Corner No. 9, Gold Nugget placer claim, MS 3303; thence S 22° 52' E. 1634.23' to Corner No. 8, HES 94, the place of beginning.

The area described contains 16.15 acres in Lemhi County.

The purpose of the withdrawal is to protect the State Creek Recreation Area. The improvements are valued at $250,000. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segretative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

William E. Ireland,

Chief, Realty Operations Section.

Date: April 7, 1988.

[FR Doc. 88-8122 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-GG-M

[OR-943-08-4220-11; GP-08-119; OR-3530(WASH), ORE-016849(WASH)]

Proposed Continuation of Withdrawals; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers proposes that two separate land withdrawals continue for an additional 88 years and requests that the lands involved remain closed to surface entry and mining.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

The U.S. Army Corps of Engineers proposes that the following identified land withdrawals be continued for a period of 88 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. All the lands are within the Lower Granite Lock and Dam Project and are described as follows:

1. OR-3530(WASH), Public Land Order No. 4581.

Containing 7.23 acres.

Located on a submerged island in the Snake River between Asotin and Whitman Counties, Washington.

T. 11 N., R. 46 E., W.M., sec. 19, Washington.

2. ORE-016849 (WASH), Public Land Order No. 3929.

Containing 158.70 acres.

Located in Garfield and Whitman Counties, approximately 10 miles north of Asotin, Washington.

T. 13 N., R. 43 E., W.M., sec. 25; T. 12 N., R. 44 E., W.M. sec. 25; T. 13 N., R. 44 E., W.M., sec. 33; and T. 11 N., R. 43 E., W.M. sec. 23, Washington.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws. The U.S. Army Corps of Engineers requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized offer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: April 8, 1988.

[FR Doc. 88-8120 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-33-M

[WY-930-08-4220-10; W-101818]

Proposed Withdrawal and Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 11,335.86 acres of public land and mineral estate in Big Horn County, to protect the Spanish Point Caves and associated subsurface karstic waterways. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments must be received by July 13, 1988.

ADDRESS: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307-772-2072.

SUPPLEMENTARY INFORMATION: On March 24, 1988, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights

Sixth Principal Meridian, Wyoming

T. 50 N., R. 88 W.,
Sec. 5, lots 6 and 7.
T. 50 N., R. 89 W.,
Sec. 1, lots 12-20, N½NW¼SW¼;
Sec. 2, lots 17-20, N½S½;
Sec. 3, lots 8, 9, 19, 20, SE¼;
Sec. 4, lots 5, 6, 11-14, 19, and 20.
T. 51 N., R. 88 W.,
Sec. 4, SW¼NW¼, W½SW¼;
Sec. 5, lots 6-10, SW¼NE¼, S½SE¼NE¼, SE¼;
Sec. 8, lot 1, NW¼NE¼;
Sec. 28, W½SW¼;
Sec. 32, lots 2-4, NE¼, N½SE¼, SW¼SE¼;
Sec. 33, W½NW¼.
T. 51 N., R. 89 W.,
Sec. 1, lot 11;
Sec. 11, E½E½;
Sec. 12, lots 1-4, SW¼NE¼, S½NW¼, SW¼, E½SE¼;
Sec. 13, lots 1-3, N½NW¼,
Sec. 14, lots 1 and 2, NE¼, S½NW¼, NE¼SW¼; S½SW¼, W½SE¼;
Sec. 22, E½E½;
Sec. 23, W½;
Sec. 26, W½NW¼;
Sec. 27, E½;
Sec. 33, E½SE¼;
Sec. 34, N½, N½NE¼SW¼; W½SW¼.
T. 52 N., R. 88 W.,
Sec. 16, SW¼SW¼;
Sec. 17, E½SE¼SE¼;
Sec. 32, lot 4, SW¼SE¼.
T. 52 N., R. 89 W.,
Sec. 21, S½;
Sec. 22, S½N½, S½;
Sec. 23, SW¼NE¼, SE¼NW¼, N½S½, Sw¼SW¼.

Federal surface and subsurface estates, managed by the U.S. Forest Service, Bighorn National Forest:

T. 51 N., R. 88 W.,
Sec. 4, lots 5-7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 9, NE¼, E½NW¼, N½NE¼SW¼ N½NW¼SE¼;
Sec. 28, E½, E½W½;
Sec. 33, E½, E½W½;
T. 52 N., R. 88 W.,
Sec. 15, W½ Unsurveyed;
Sec. 16, E½, E½W½;
Sec. 21, NE¼, E½NW¼, N½NE¼SW¼, N½SE¼;
Sec. 22, NW¼, N½SW¼ Unsurveyed;
Sec. 33, SE¼SW¼, S½SE¼.

Private surface with Federal mineral estate managed by the Bureau of Land Management.

T. 51 N., R. 89 W.,
Sec. 1, lot 10, SW¼;
Sec. 12, NW¼NE¼, N½NW¼.
T. 52 N., R. 88 W.,
Sec. 20, lots 1-3, NE¼, NW¼NW¼SE¼.
T. 52 N., R. 89 W.,

Sec. 14, NE¼NE¼SW¼; W½NE¼SW¼, W½SW¼, NW¼SE¼SW¼.
Sec. 15, SE¼NE¼SE¼, NE¼SW¼SE¼, S½SW¼SE¼, SE¼SE¼;
Sec. 22, N½NE¼, NE¼NW¼;
Sec. 23, E½NE¼, SE¼NW¼NE¼, W½ NW¼, SE¼SW¼, S½SE¼;
Sec. 24, lots 2–4, S½SW¼NW¼, W½ NW¼, SW¼, W½SE¼;
Sec. 25, N½NW¼NW¼;
Sec. 26, NE¼NE¼NE¼.

The area described aggregates approximately 11,335.86 acres in Big Horn County.

The purpose of the proposed withdrawal is to protect the Spanish Point Caves and associated subsurface karstic waterways.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that a public meeting will be held in connection with the proposed withdrawal. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are only those uses that are specifically permited by an authorized officer of the Bureau of Land Management.

Hillary A. Oden,

State Director.

April 7, 1988.

[FR Doc. 88–8124 Filed 4–13–88; 8:45 am]

BILLING CODE 4310–22–M

[CA–010–08–4322–02]

Bakersfield District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that the Bakersfield District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally May 20, and 21, 1988 in Mariposa, California. The Friday meeting will begin at 8:00 am with a raft trip down the Merced River. The Saturday Meeting will be held in the banquet room of Tink's Little Acre Restaurant starting at 8:00 am.

SUPPLEMENTARY INFORMATION: The District Advisory Council meeting agenda on Saturday will include an overview of the river, recreation on the river, commercial rafting, mining on the river, and wild and scenic legislation.

The public is invited to address the Council regarding any BLM land management issue on Saturday, May 21 from 1:00 pm to 2:30 pm.

Summary minutes of the meeting will be maintained in the Bakersfield District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bakersfield District Office, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861–4191.

Date: April 7, 1988.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 88–8178 Filed 4–13–88; 8:45 am]

BILLING CODE 4310–40–M

[AZ–027–7–21]

Phoenix District Planning Amendment/ Environmental Assessment and Decision Record, Phoenix District, AZ; Availability and Public Comment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the decision record, final EA and planning amendment to the Lower Gila South RMP.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, a Planning Amendment and Final Environmental Assessment was prepared by the Phoenix District, Arizona. A subsequent Decision Record and Finding of No Significant Impact (FONSI) is made available for public comment.

The public review and comment period will end thirty (30) days from the date of this notice in the **Federal Register** after which the Decision will become final.

The Decision finds it appropriate to amend the Lower Gila South RMP for the purpose of the designation of public lands relative to off-road vehicle (ORV) use and designation of Areas of Critical Environmental Concern (ACEC).

Public Participation

Copies of the Decision Record and FONSI are available upon request from the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863–4464. Public reading copies of the amendment/EA may be reviewed at the above address and the Bureau of Land Management, Arizona State Office, 2707 North Seventh Street, Phoenix Arizona 85014, (602) 241–5547.

Written comments should be sent to William T. Childress, Area Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Herman Kast,

Acting District Manager.

Dated: March 30, 1988.

[FR Doc. 88–8118 Filed 4–13–88; 8:45 am]

BILLING CODE 4310–32–M

Minerals Management Service

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5695, Block 113, Main Pass Area, offshore Louisiana. Proposed plans for the above area provided for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on April 1, 1988. Comments must be received by April 29, 1988, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building.

625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: April 5, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-8136 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes of conduct on Lease OCS-G 2047, Block 272, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 5, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Warren Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: April 5, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-8133 Filed 4-13-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31127]

CSX Transportation, Inc., and Central of Georgia Railroad Co.—Exemption; Joint Project for Relocation of a Line of Railroad

The notice of exemption published October 28, 1987 [52 FR 41515], concerned the joint project of CSX Transportation, Inc. (CSX) and Central of Georgia Railroad Company (Central) to relocate a line of railroad. The joint project will provide for relocation of a small segment of CSX's main line in Valdosta, GA, to a right-of-way previously used by Central that passes under the Patterson Street overhead bridge.

As described in the previous notice, the joint project involves a number of activities. The notice indicated that insofar as the project involves the relocation of a line of railroad that does not disrupt service to shippers, it falls within the class of exempted transactions identified at 49 CFR 1180.2(d)(5). The notice indicated further that a decision of the Commission, Director Mackall, served October 28, 1987, had rejected, as not falling under 49 CFR 1180.2(d)(5), two of the activities proposed by the carriers.

The activities rejected were: (1) The abandonment of the former Central main line track between mileposts GF-27.75; and GF-28.75 and (2) the realignment or contruction of two segments of connector track (510 feet and 547 feet). In an appeal filed November 17, 1987, Central described the joint relocation project in detail, demonstrating that the abandonment of the former Central main line track was necessary to the project and would not affect rights of shippers, and the realignment or construction of the connector track segments was already exempt under Commission precedent. The appeal was granted in a decision served concurrently with this one. Accordingly, the prior notice of exemption is being supplemented here to include the above-described abandonment.

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the abandonment of the former Central main line will be protected by the conditions in *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

This notice is effective immediately. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.

Decided: April 6, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-8172 Filed 4-13-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-88-50-C]

HICO Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

HICO Coal Company, P.O. Box 72, Woodbine, Kentucky 40771 has filed a

petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15–16155) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapsed time between trips does not exceed 20 mimutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 16, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvery,

Director, Office of Standards, Regulations and Variances.

Date: April 8, 1988.

[FR Doc. 88–8160 Filed 4–13–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–66–C]

Wolf-Creek Collieries Co., Petition for Modification of Application of Mandatory Safety Standard

Wolf-Creek Collieries Company, Caller 802, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 4 Mine, Longwall Panels B and C (I.D. 15–04020) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner states that the longwall mining systems will increase in width, which will require additional horsepower to power the longwall system, nominally 1950 and 2500 horsepower. In order to supply power to such a mining system from a power system limited to 1,000 volts, the following problems arise:

(a) The ampacity requirements at 1,000 volts are such that very large and heavy cables must be used. These large, heavy cables cause congested work space and handling problems. Accident information indicates that a large number of electrical-related injuries are strains and sprains incurred during cable handling;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be applied to the face conveyor; and

(c) A diminished safety factor as the interrupting limits of the available circuit breakers at 1,000 volts is approached.

3. As an alternate method, petitioner proposes to use high-voltage (not to exceed 2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 626, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 16, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 6, 1988.

[FR Doc. 88–8159 Filed 4–13–88; 8:45 am]

BILLING CODE 4510–43–M

Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment Meeting; Extension of Comment Period

AGENCY: Assistant Secretary for Veterans' Employment and Training, Labor.

SUMMARY: This document extends the comment period for persons wishing to submit written comment regarding the Secretary of Labor's Committee on Veterans' Employment National Forum on "Workforce 2000 and America's Veterans" set forth in the **Federal Register** at 53 FR No. 45, pp. 7427–7428, March 8, 1988.

DATES: The comment period is extended through May 23, 1988.

ADDRESSEE: Written comments (three copies) should be submitted to the National Veterans Training Institute (NVTI), University of Colorado at Denver, 1250 14th Street, Suite 650, Denver, CO 80202, telephone: (800) 331–0562.

FOR FURTHER INFORMATION CONTACT: Lesley A. Elliott, Executive Assistant to the Assistant Secretary for Veterans'

Employment and Training, 200 Constitution Avenue, NW., Room S1313, Washington, DC 20210, Tel. (202) 523-9116.

SUPPLEMENTARY INFORMATION: On March 8, 1988, the Assistant Secretary of Labor for Veterans' Employment and Training published a notice (53 FR No. 45 7427) of a meeting of the Secretary of Labor's Committee on Veterans' Employment on April 19, 20 and 21 for a National Forum on Workforce 2000 and America's Veterans. The Forum will provide interested parties with the opportunity to present oral and/or written statements of their views, as well as participate in a colloquy concerning the employment and training needs of veterans. In that Notice the Assistant Secretary invited all interested persons not attending the Forum to submit written comments concerning the Forum and topics to be presented on or before April 20, 1988.

The Assistant Secretary has received requests for additional time to prepare comments, and the Assistant Secretary believes that it is appropriate to grant such additional time for persons not attending the Forum and to include persons that will attend the Forum but wish to submit written comments. Accordingly, this Notice extends the comment period during which comments on the Forum and Forum topics will be received from all interested parties through May 23, 1988.

Notice of Extension of Comment Period

Notice is hereby given that the period of time for the submission of public comments on the National Forum on Workforce 2000 and America's Veterans is hereby extended for all interested parties through Monday, May 23, 1988.

Signed at Washington, DC, this 8th day of April 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 88-8158 Filed 4-13-88; 8:45 am]

BILLING CODE 4510-79-M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Open Hearing

AGENCY: National Commission To Prevent Infant Mortality.

ACTION: Notice of open hearing.

SUMMARY: In accordance with Pub. L. 99-660, notice is given of the third hearing of the National Commission to Prevent Infant Mortality. The purpose of this hearing is to discuss the role of the federal, state, and local governments in reducing infant mortality.

DATE: April 25, 1988.

Time: 1:00 a.m.-5:00 p.m.

ADDRESS: State of Illinois Center, 100 West Randolph, Room 503, 16th Floor, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Mary Brecht, 202/472-1364.

Rae K. Grad,

Executive Director.

[FR Doc. 88-8109 Filed 4-13-88; 8:45 am]

BILLING CODE 6820-SK-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishments

The Assistant Director for Computer Information Science and Engineering (CISE) has determined that the establishments of panels listed below are necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Program Advisory Panel for Advanced Scientific Computing.

Purpose: Primarily to advise on the merit of proposals for the maintenance and improvement of national supercomputer centers, and for research in high performance computing technologies and engineering. These proposals have been submitted to NSF for financial support. Additionally, the Panel provides oversight, general advice, and policy guidance to the programs within the Division of Advanced Scientific Computing.

Name of Committee: Advisory Panel for Networking and Communications Research and Infrastructure.

Purpose: Primarily to advise on the merit of proposals in the areas of Networking and Communications Research, management of the NSF net and coordination and improvement of the associated infrastructure within the scientific research community. Additionally, the Panel provides oversight, general advice and policy guidance to the Division of Networking and Communications Research and Infrastructure.

M. Rebecca Winkler,

Committee Management Officer.

April 5, 1988.

[FR Doc. 88-8162 Filed 4-13-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Advisory Committee for Atmospheric Sciences

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).

Date and Time: May 2-4, 1988, 9:00 a.m.-5:00 p.m. each day.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting:

Closed—May 2—9:00 a.m. to 5:00 p.m.
May 3—9:00 a.m. to 2:00 p.m.

Open—May 3—2:00 p.m. to 5:00 p.m.
May 4—9:00 a.m. to 5:00 p.m.

Contact: Dr. Eugene M. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9874.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations on long-range planning and oversight concerning support for research and research areas.

Agenda:

Closed: Oversight review of the Atmospheric Chemistry, Climate Dynamics, and Experimental Meteorology Programs including examination of proposals, reviewer comments, and other privileged material.

Open: Presentations on Long-Range Planning, Human Resources, oversight reports, and general discussion.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.

April 11, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-8179 Filed 4-13-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Cellular Physiology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cellular Physiology.

Date and Time: May 9, 10, 11, 1988—8:30 a.m. to 5 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Maryanna P. Henkart, Program Director, Cellular Physiology Program (202) 357–7377, Room 321, National Science Foundation, Washington DC 20550.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Cellular Physiology.

Agenda: To review and evaluate research proposals and projects as part of the selection process of awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

April 11, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88–8165 Filed 4–13–88; 8:45am]

BILLING CODE 7555-01-M

Meeting; Advisory Panel for Ethics and Values Studies

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ethics and Values Studies.

Date and Time: May 9, 1988, 8:30 a.m. to 5:00 p.m. May 10, 1988, 8:30 a.m. to 5:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC.

Type of Meeting: Part Open—Open May 9, 8:30 a.m. to 10:30 a.m. Closed remainder.

Contact Person: Dr. Rachelle Hollander, Coordinator, Ethics and Values Studies, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9894.

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research and related activities in this field.

Agenda:

Open—General discussion of EVS priorities in the Studies in Science, Technology and Society program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 11, 1988.

[FR Doc. 88–8180 Filed 4–13–88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for International Programs; Notice of Meeting

National Science Foundation announces the following meeting:

Name: Advisory Committee for International Programs.

Date: May 5, 1988, 8:30 a.m. to 5:00 p.m.; May 6, 1988, 8:30 a.m. to 1:00 p.m.

Place: National Science Foundation, 1800 G Street NW., Room 1143, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. John Boright, Director, Division of International Programs, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9552.

Summary of Minutes: May be obtained from Contact Person.

Purpose of Meeting: To provide advice, recommendations, and oversight related to support for international cooperation in science and engineering.

Tentative Agenda:

May 5

- Status report on international programs of NSF.
- Status of current international initiatives.
- Briefing on International Information and Analysis Section activities.
- Discussion of science and engineering information and communications.

May 6

- Briefing on Developing Countries Programs.
- Discussion of science and engineering cooperation with Developing Countries.

M. Rebecca Winkler,

Committee Management Officer.

April 11, 1988.

[FR Doc. 88–8166 Filed 4–13–88; 8:45 am]

BILLING CODE 7555-01-M

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting and Public Hearing

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Task Force followed by a public hearing on May 4, 1988, followed by a meeting of the Task Force on May 5, 1988.

Public Hearing

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date: May 4, 1988.

Time: 10:00 a.m.–3:30 p.m.

Place: Community College of Baltimore, Harbor Campus—Harry Bard Building, 600 E. Lombard Street, Baltimore, MD 21202.

Purpose: The Task Force will seek testimony from interested parties on innovative ways to increase opportunities for women, minorities and the handicapped in science and technology in the areas of employment research, higher education, precollege education and social aspects.

Testimony will be heard in three ways: (1) Scheduled testimony of ten-minute summary presentations accompanied by longer written statements and supporting documents for the record; (2) summary statements from the floor of three-minute duration accompanied by any longer written statements or materials for the record; and (3) written testimony submitted to the Task Force offices from those who cannot be heard because of time constraints or those who cannot attend.

Anyone wishing to testify or submit a statement for the record should write Sue Kemnitzer, Executive Director, Task Force on Women, Minorities, and the Handicapped in Science and Technology, 330 C Street, SW., Washington, DC 20201.

The public hearing will be followed by a discussion of the testimony by the Task Force members May 4, 1988.

Meeting

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date: May 5, 1988.

Time: 9:00 a.m. to 4:00 p.m.

Place: Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201.

Type of Meeting: Open.

Purpose: The purpose of the Task Force on Women, Minorities and the Handicapped is to:

—Examine the current status of women, minorities and the disabled in science and engineering positions in the federal government and in federally-assisted research programs;

—Coordinate existing federal programs designed to promote the employment of women, minorities and the physically disabled scientists and engineers;

—Suggest cooperative interagency programs for promoting such employment;

—Identify exemplary programs in the state, local or private sectors and;

—Develop a long-range plan to advance opportunities for women, minorities, and disabled persons in science and technology.

Agenda: Reports will be heard on progress of the subcommittees on Employment, Research, Higher Education, Precollege Education and Social Aspects, as well as other business of the Task Force.

All meetings and public hearings of the Task Force are open to the public and all proceedings will be recorded and will be available at the Task Force offices.

Sue Kemnitzer,

Executive Director, (202) 245-7477.

April 4, 1988.

[FR Doc. 88-8167 Filed 4-13-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Computer and Computation Research; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Computation Research.

Date and Time:

May 5, 1988, 9:00 a.m. to 6:00 p.m.
May 6, 1988, 9:00 a.m. to 3:30 p.m.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: All Open.

May 5 OPEN—9:00 a.m. to 6:00 p.m.
May 6 OPEN—9:00 a.m. to 3:30 p.m.

Contact Person: Peter Freeman, Division Director, Division of Computer and Computation Research, Room 304, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-9747 email: pfreeman@note.nsf.gov. Anyone planning to attend this meeting should notify Dr. Freeman no later than May 2, 1988.

Purpose of Committee: To provide advice and recommendations concerning support of Computer Research.

Summary Minutes: May be obtained from the contact person at the above address.

Agenda

Thursday, May 5, 1988, Room 543—9:00 a.m. to 5:00 p.m.—Open

9–9:30—Introduction and Overview of CCR Status—Dr. Peter Freeman, DD/CCR
9:30–10—Status of cross-directorate and foundation-wide programs—Dr. Harry Hedges, Acting Head/OCDA
10–11—Discussion with Dr. Bill Wulf, AD/CISE Designate
11–12—Human Infrastructure Trends Post docs—Dr. Peter Freeman, DD/CCR Graduate Fellowships—Dr. Rao Kosaraju, Johns Hopkins University Undergraduate enrollments Dr. J. Mack Adams, Program Director
12–1:30—Lunch—Open
1:30–3:30—Report on and discussion of Workshop on Software Engineering—Dr. Rick Adrion, University of Massachusetts
3:30–5—Report on and discussion of Workshop on Numeric and Symbolic Computation—Dr. Bob Caviness, Program Director
5–6—Committee business—Dr. John Hopcroft, Cornell University

Friday, May 6, 1987, Room 543—9:00 a.m. to 3:30 p.m.—Open

9–10:30—Report on and discussion of Workshop on Undergraduate Education—J. Foley, George Washington University
10:30–11:30—Report on NAS Computer Science and Technology Board—Dr. Joe Traub, Columbia University
11:30–12:30—Committee business
12:30–2—Lunch
2–3—Discussion with Mr. Erich Bloch, Director, NSF
3–3:30—Committee business

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-8163 Filed 4-13-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Plant Science Centers; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Plant Science Centers.

Date and Time: May 2, 1988—8:30 a.m. to 5:00 p.m.

Place: Room 543, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Robert Rabin, Senior Advisor for Biotechnology, Directorate for Biological, Behavioral and Social Sciences, (202) 357-9894, Room 312, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for the establishment of Plant Science Centers and the research to be conducted in each.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-8164 Filed 4-13-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of 10 CFR Part 50, Appendix R, to the Boston Edison Company (BECo/licensee) for the Pilgrim Nuclear Power Station located at the licensee's site in Plymouth County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant exemptions from certain requirements of Appendix R of 10 CFR Part 50. The exemption was requested from Section III.G.1.(a) to the extent that it requires that capability exists to achieve and maintain hot shutdown from either the Control Room or emergency control station(s) without the need of operator actions classified as repairs. The licensee requested that operator actions which includes repairs be allowed under specific circumstances.

The Need for the Proposed Action

The proposed exemptions are needed because the plant-specific circumstances and features described in the licensee's request regarding operator action which is the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability. The operator actions identified are required to assure that one train of cables and equipment necessary to achieve and maintain safe shutdown will be available in the event of a fire.

Environmental Impacts of the Proposed Action

The proposed exemptions, based on the existing physical plant design and fire protection features, will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined, nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with these proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to require rigid compliance with the applicable portions of Section III.G.1(a) of the Appendix R requirements. Such action would not enhance the protection of the environment and would result as unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of any resources not considered previously in the Final Environmental Statements related to the operation of Pilgrim Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the foreign environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated October 2, 1987. The letter is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts.

Dated at Rockville, Maryland, this 8th day of April, 1988.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Director Project Directorate I-3 Division of Reactor Projects I/II.

[FR Doc. 88-8171 Filed 4-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-295, 50-304]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 111 and 100 to Facility Operating License Nos. DPR-39 and DPR-48 issued to Commonwealth Edison Company, which revised the Technical Specifications for operation of the Zion Station, Units 1 and 2, located in Zion, Illinois. The amendments were effective as of the date of their issuance.

The amendments allow steam generator tubes to be repaired by utilizing Westinghouse mechanical sleeving methodology.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 2, 1988 (53 FR 6715). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and pursuant to 10 CFR 51.32(d)(4) an environmental assessment was prepared in connection with issuance of the amendments.

For further details with respect to the actions see (1) the application for amendment December 24, 1987, supplemented February 11, 1988, (2) Amendment No. 111 to License No. DPR-39, (3) Amendment No. 100 to License No. DPR-48 and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., and at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland this 6th day of April 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-8170 Filed 4-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424]

Georgia Power Co. et al.; Correction

53 FR 10450 published on March 31, 1988, contained a "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing" related to the Vogtle Electric Generating Plant,

Unit 1. The date in the first line of column one on page 10451 should be corrected to read May 2, 1988.

Dated at Rockville, Maryland, this 7th day of April 1988.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Director, Project Directorate II–3, Division of Reactor Projects I/II.

[FR Doc. 88–8169 Filed 4–13–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25552; File No. SR–CBOE–88–6]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Margin Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on March 25, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Rule 12.3(a)(5) For each put or call option dealt in on a registered national securities exchange, or a securities association and issued by the Options Clearing Corporation carried in a short position in the account, margin must be deposited and maintained equal to at least 100% of the current market value of the contract plus [15%] *20%* of the market value of equivalent units of the underlying security value; and for each put or call contract not dealt in on an exchange carried in a short position in the account, 100% of the current market value of the contract plus 45% of the market value of equivalent units of the underlying security value. In each, the amount shall be decreased by any excess of the exercise price of the option over the current market value of the underlying security in the case of a call or any excess of the current market value of the underlying security over the exercise price of the option in the case of a put; provided, however, that the minimum margin required on each such option contract shall not be less than the option market value plus [5%] *10%* of the market value of equivalent units of the underlying security value for an option dealt in on an exchange; and the option market value plus 10% of the market value of equivalent units of the underlying security value for an option not dealt in on an exchange. As an exception to the foregoing, where both a put and a call option contract for the same number of shares of the same underlying security are carried in a short position in an account, the amount of the margin required shall be the margin on the put or call, whichever amount is greater, [increased by the amount of an unrealized loss on] *plus 100% of the current market value of* the other option.

(b) through (d) No change.

Rule 24.11(a) No change.

(b)(i) Option Contract on a Market Index.

For each put or call option contract on a market index carried in a short position in the account, margin must be deposited and maintained equal to at least 100% of the current market value of the contract plus [10%] *15%* of the current index value times the index multiplier. In each case, the amount shall be decreased by any excess of the aggregate exercise price of the option over the current index value as multiplied by the index multiplier in the case of a call, or any excess of the current index value as multiplied by the index multiplier over the aggregate exercise price of the option in the case of a put; provided, however, that the minimum margin required on each such option contract shall not be less than the option market value plus [5%] *10%* of the current index value times the index multiplier.

(b)(ii) and (c)(1) No change.

(c)(2) Short put and short call.

This subparagraph (c)(2) applies to accounts carrying positions in short put index options which are offset by positions in short call index options for the same underlying index with the same index multiplier. The margin required for such a position shall be the margin required for the short put option contract or the margin required for the short call option contract (pursuant to paragraph (b) of this Rule), whichever is greater, as determined by (b) above [, increased by the amount of any unrealized loss on] *plus 100% of the current market value of* the other option contract.

(d) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change raises the margin requirements applicable to broad market index and equity options. The Exchange has deemed it advisable to impose higher margin requirements to ensure sufficient margin protection in view of the increased aggregate volatility of the markets experienced in the fourth quarter of 1987.

Since October 1985, the Exchange's rule setting forth minimum margin for all options has been based on a premium plus formula. The formula called for the deposit and maintenance for each short put or call option of at least 100% of the current premium plus a percentage, 15% of the current value of the underlying for equity options and 10% of the current index value times the index multiplier for market indices. In each case the margin may be reduced by any out-of-the-money amount, with a minimum of 100% plus 5% of the current value of the underlying. The percentage levels were established to cover 95% of all historical seven business day percentage price moves in the applicable underlying instrument during a recent twelve month review period.

In the last quarter of 1987, the volatility level of the stock market increased substantially. Accordingly the Exchange has reduced the applicable review period from twelve to six months to provide a methodology which is more responsive to changes in market volatility. Based upon a review of six month data, the Exchange has determined to increase by 5% the basic and minimum formula percentages for both index and equity options. The exception for straddle/combination positions is proposed to be modified to more accurately reflect the potential risk of the positions.

The new requirements would be in effect for a period of six months commencing on the date the margin

increases become effective for positions established on or after the effective date. At the end of the six month period, the new percentages would revert to their previous levels unless other percentages proposed by the Exchange are deemed to be appropriate in light of the experienced market volatility. During this period, the Exchange, in conjunction with the other securities regulators, will have an opportunity to determine adequate procedures to routinely monitor and adjust margin levels so that they will provide adequate protection to the carrying broker-dealers based on current market volatilities.

The Exchange believes that the proposed rule change is consistent with the provisions of the Act and, in particular, Section 6(b) thereof, in that the rule change is designed to adjust margins for market index and equity options to a level which provides a reasonable amount of financial protection to the securities industry and does not permit the excessive use of credit for the purchase or carrying of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 7, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-8224 Filed 4-13-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

April 8, 1988

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

ACM Government Securities
Common Stock, $.01 Par Value (File No. 7-3206)
Baltimore Bancorp
Common Stock, $5.00 Par Value (File No. 7-3207)
Businessland, Inc.
Common Stock, No Par Value (File No. 7-3208)
Emerald Homes, L.P.
Common Stock, No Par Value (File No. 7-3209)
Fine Homes International, L.P.
Common Stock, No Par Value (File No. 7-3210)
Fischbach Corporation
Common Stock, $1.00 Par Value (File No. 7-3211)
Hannaford Brothers
Common Stock, $.75 Par Value (File No. 7-3212)
High Income Advantage Trust
Shares of Beneficial Interest, $.01 Par Value (7-3213)
IMC Fertilizer Group Inc.
Common Stock, $1.00 Par Value (File No. 7-3214)
Leisure Technology Inc.
Common Stock, $.10 Par Value (File No. 7-3215)
Liggett Group Inc.
Common Stock, $1.00 Par Value (File No. 7-3216)
M.D.C. Assett Investors
Common Stock, $.01 Par Value (File No. 7-3217)
Millipore Corporation
Common Stock, $1.00 Par Value (File No. 7-3218)
Oneida Limited
Common Stock, $6.25 Par Value (File No. 7-3219)
St. Joseph Light & Power Co.
Common Stock, No Par Value (File No. 7-3220)
Triton Group Ltd.
Common Stock, $.10 Par Value (File No. 7-3221)
USLICO Corp.
Common Stock, $1.00 Par Value (File No. 7-3222)
U.S. Surgical Corporation
Common Stock, $.10 Par Value (File No. 7-3223)
Vendo Company
Common Stock, $1.25 Par Value (File No. 7-3224)
MGI Properties
Common Stock, $1.00 Par Value (File No. 7-3225)
Wichita River Oil Co.
Common Stock, No Par Value (File No. 7-3226)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 29, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-8221 Filed 4-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25549; File No. SR-PSE-88-01]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Changes to the Constitution and the Certificate of Incorporation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1988, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange pursuant to Rule 19(b)-4 of the Act, hereby proposes the following changes to the Certificate of Incorporation and the articles of the constitution of the PSE:

Certificate of Incorporation, Ninth Article

Ninth. The Corporation may provide indemnification for members of its Board of Governors and of committees of the Board of Governors and of other committees of the Corporation, its officers, agents and employees, and those serving another corporation, partnership, joint venture, trust or other enterprise at the request of the Corporation, within the limits permitted by Delaware law, to safeguard such persons from expense and liability for actions they take in any such capacity in good faith in furtherance of, or without belief that such actions are opposed to, the best interests of the Corporation and its members. *To the fullest extent permitted by Delaware law, or any other applicable laws, the members of the Board of Governors shall not be liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a Governor.*

Constitution

Article II, Section 7

[Transition Provision]

[*Sec. 7.* At the first annual meeting following the effectiveness of the amendments to the Constitution approved at the Special Meeting on October 17, 1979 ("1979 Amendments"), a Vice Chairman elect shall be elected to serve for a term of one year from the date of election and until his successor is elected and qualified. If the 1979 Amendments become effective before the Annual Meeting in 1980, until such time as the position of Chairman is filled or until the 1980 Annual Meeting, whichever is earlier, the person who is presently Chairman would retain the title of Chairman, and would perform the duties of Chairman, as such duties were constituted prior to the effectivness of the 1979 Amendments, and the person who is presently Vice Chairman would retain the title of Vice Chairman and would perform the duties of Vice Chairman as those duties were constituted prior to the effectiveness of the 1979 Amendments, but at such time as the position of Chairman is filled the person who is presently Chairman would be Vice Chairman, with the duties of that office as provided in the 1979 Amendments, and such person would become Vice Chairman at the 1980 Annual Meeting. If the 1979 Amendments become effective after the 1980 Annual Meeting and the position of Chairman has not yet been filled, until such time as the position of Chairman is filled the Vice Chairman (who, after the 1980 Annual Meeting, would be the person who is presently Vice Chairman) would have the title of Chairman and would perform the duties of Chairman, as such duties were constituted prior to the effectiveness of the 1979 Amendments, but at such time as the position of Chairman is filled the titles and duties of the Vice Chairman and Vice Chairman elect would be as provided in the 1979 Amendments. Until the position of Chairman is filled the President will be the Chief Executive Officer as well as the Chief Operating Officer.]

Article V, Section 1

Number of Memberships

Sec. 1. The number of authorized memberships in the Exchange shall [be 516] *not exceed 552.* * * * (No change is proposed with respect to the remainder of this section).

Article VI, Section 2

Application for Membership & Election

Sec. 2. Application for membership in the Exchange must be made in accordance with [the rules] *Rule IX* of the Board of Governors. [After the Board of Governors of the Exchange has cleared the applicant for membership.] *Upon approval,* the name of the applicant shall forthwith be posted with all members of the Exchange for a period of ten days.

Article VII, Section 4

Payment Purchase Price

Sec. 4. [At least four days prior] *Prior* to the effective date of admission to membership of the transferee, any purchase price being paid for such transfer shall be paid to the Exchange. * * * (No change is proposed for the remainder of this section.)

Article VIII, Section 4

Exchange Membership Asset of Firm

Sec. 4. The membership of every member of the Exchange who has conferred his membership privileges on any firm shall be deemed to be an asset of such firm *only* to the extent necessary to protect [its creditors, subject to the provisions of] *claimants under* Article VII as to the disposition of such proceeds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspect of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of each of the proposed rule changes is as follows:

1. Certificate of Incorporation, *Ninth Article*

This proposed amendment is based on a change in Delaware law (the PSE is incorporated under the laws of the state of Delaware). Delaware Corporations Code, section 102(b)(7), (added 1986), states that a Certificate of Incorporation

may include a provision eliminating or limiting a director's personal liability to the corporation for monetary damages for breach of fiduciary duty as a director. Many Boards of Delaware Corporations have adopted similar provisions in 1987. The new law:

(a) Does *not* permit the elimination or limitation of a director's liability for breach of its duty of loyalty, for acts or omissions not in good faith, for intentional misconduct, or for any transaction from which the director derived an improper personal benefit,

(b) Does *not* eliminate the fiduciary duty, it merely prevents the imposition of monetary damages in the event of breach. Other legal remedies such as rescission and injunction remain available,

(c) Applies to a breach of fiduciary duty (standard of care) only, and does not extend to other duties owed by the directors to the Corporation (standard of loyalty).[1]

2. PSE Constitution, Article II, section 7, Transition Provision

This provision was added as part of the constitutional amendments in 1979. Its purpose was to provide that there would be a Chairman and Vice Chairman at all times whether the 1979 amendments became effective prior to or subsequent to the 1980 annual meeting.

This section is now obsolete and the Exchange membership has voted to delete the section entirely.

3. Article V, section 1, *Number of Memberships*

In April 1987, the creation of 36 additional members via a rights offering was approved by the SEC after approval by the PSE Board and members. The amendment will reflect this increase in the number of memberships.

4. Article VI, section 2, *Application for Membership and Election*

The purpose of this change is to provide reference to Rule IX which contains a more detailed description of procedures for eligibility, application, and approval for membership.

5. Article VII, section 6, *Payment Purchase Price*

Currently, admission to membership is effective almost immediately after payment of the purchase price. Deleting the first four words of this sections "at least four days prior" more accurately reflects that current practice. Holding admission up for four days after payment is no longer required.

6. Article VIII, section 4, *Exchange Membership Asset of Firm*

Under this section, as it now stands, confusion is created by the use of the word "asset". Questions arise as to whether a member may use its membership as collateral, or whether a lien by one other than a member may be placed on a membership.

This is the only section that refers to membership as an asset. Throughout the constitution and the rules, membership is referred to as a privilege that creates no vested rights in the member. Because membership is only a privilege, revocable at will be the PSE, it is not personal property and cannot be subject to an external lien, nor used as collateral.

The proposed change will clarify that the use of membership as an "asset" refers only to claims arising under Article VII. It is believed that this change reflects the true intent of the section.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule changes were sent to each member and approved by over a ⅔ majority vote of the general membership at the annual meeting on January 28, 1988.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period, (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes; or

(B) Institute proceedings to determine whether the proposed rule changes or any Rule changes should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld form the public in accordance with the provisions of 5 U.S.C. 55, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE–88–01 and should be submitted within May 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 6, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–8229 Filed 4–13–88; 8:45 am]

BILLING CODE 8010–01–M

[1] The Commission requests commentators to address the question of whether, as a matter of public policy or law, it is appropriate for a corporation operating as a national securities exchange with substantial self-regulatory responsibilities under the federal securities laws to adopt a provision that would completely exempt members of the PSE's Board of Governors from monetary liability to the corporation or its members for breach of fiduciary duty, including situations where the breach constitutes gross negligence.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 8, 1988

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

MFS Intermediate Income Trust Shares of Beneficial Interest, No Par Value (File No. 7–3227)

Templeton Global Income Fund Common Stock, $0.01 Par Value (File No. 7–3228)

Thoretec International, Inc. Common Stock, $0.25 Par Value (File No. 7–3229)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 29, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-8222 Filed 4-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25547; File No. PHLX 88-16]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Time Stamping Options Order Tickets

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 24, 1988 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange"), proposes to amend the following Floor Procedure Advice F-2 Responsibility for Time Stamping and Matching to provide for an alternative manual method of recording execution times on orders effected in the trading crowd upon approval of a floor official. The text of the proposed rule change is set forth below. [Brackets] indicate deletions; *italics* indicates additions.

F-2 Responsibility for Time Stamping and Matching

It is the duty of the largest participant in an options transaction to both match and time stamp the order tickets involved. If there is only one seller and one buyer, the seller is responsible for the matching and time stamping. *However, when a large, active trading crowd makes it impractical to reach a time clock, a floor official may instead allow members to handwrite execution times on orders effected in the crowd that day. It should be noted that time clock exemptions apply only to execution times and do not apply to either order receipt times or orders placed on the book.*

F-2		
1st occurrence	[$25.00]	$50.00
2nd occurrence	[$50.00]	$100.00
3rd occurrence	[$100.00]	$250.00
4th occurrence and thereafter		Sanction is discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to provide for an alternative manual method of recording execution times on orders effected in the trading crowd upon approval of a floor official when a large active trading crowd makes it impractical to reach a time stamp clock. The proposed rule change also raises the fines for violating the order ticket time stamping matching requirements.

The proposed rule change is based on section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to facilitate compliance with the Exchange's Floor Procedure Advices and Commission regulations respecting the maintenance of accurate books and records.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: April 4, 1988.

[FR Doc. 88-8225 Filed 4-13-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17985]

Application and Opportunity for Hearing; Allied-Signal Inc.

April 7, 1988.

Notice is hereby given that Allied-Signal Inc. (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of The Chase Manhattan Bank (National Association) ("Bank") under an indenture dated as of October 1, 1985 (the "1985 Indenture") between the Company and Bank which was heretofore qualified under the Act, under an indenture dated as of October 1, 1983 (the "1983 Indenture") between Allied Corporation ("Allied") and Bank supplemented as of August 15, 1984 ("August Supplement") and September 30, 1987 ("September Supplement") pursuant to which the Company assumed the obligations of Allied which was heretofore qualified under the Act, and under a Note Facility Agreement dated as of October 15, 1987 (the "Agreement") between the Company and Bank relating to Allied-Signal Inc. TREND Financing (Tailored Rate ESOP Notes on Demand) (the "Demand Notes") which has not been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the indentures or the Agreement. The 1985 Indenture and the 1983 Indenture are herein collectively referred to as the "Indentures".

The Company alleges:

(1) Pursuant to the 1984 Indenture, the Company had outstanding $100,000,000 aggregate principal amount of its 9.40% Notes due 1988, $200,000,000 9⅞% Sinking Fund Debentures due 1997, $22,500,000 10½% Notes due 1991, $100,000,000 9½% Debentures due 2016, $250,000,000 9⅞% Debentures due 2202 and 100,000 warrants to purchase $100,000,000 of the Company's 10.48% Notes due 1995 (reserved for issuance in 1988) (collectively, the "Debentures"). The Debentures and other debt securities to be issued from time to time under the 1985 Indenture were registered under the Securities Act of 1933 (the "1933 Act") and the 1985 Indenture was qualified under the Act.

(2) Pursuant to the 1983 Indenture and the September Supplement, the Company had outstanding $413,390,000 aggregate principal amount of Zero Coupon Serial Bonds Due 1985–2009 (the "Bonds"). The Bonds were registered under the 1933 Act and the 1983 Indenture was qualified under the Act.

(3) The Company's obligation under the Agreement is $85,000,000. This obligation was not registered under the 1933 Act nor qualified under the Act.

(4) The Company's obligations under the Indentures and the Agreement are wholly unsecured and rank *pari passu inter se.*

(5) The Company is not in default under the Indentures, the Debentures, or the Bonds.

(6) The Company is not in default under the Agreement, or the Demand Notes:

(7) Such differences as exist between the Indentures and the Agreement are not so likely to involve a material conflict of interest as to make it necessary in the public interest or the protection of investors to disqualify the Bank from acting as Trustee under the Indentures or the Agreement.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-17985, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than May 4, 1988, request in writing that a hearing be held on this matter, stating the nature of his interest, the reason for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Any any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-8228 Filed 4-13-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8151]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Standard Logic, Inc. (Common Stock, $.025 Par Value)

April 8, 1988.

Standard Logic, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company has suffered declining sales and net losses to such an extent that the Company no longer is large enough to attract securities industry analysis. There has been no significant or regular trading of the Company's common stock on the BSE and, therefore, the Company does not believe there exists an established public market in such security on the BSE. The Company's common stock is also listed on the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). Recently, all trading in the Company's common stock has occurred on NASDAQ. The Company expects that its common stock will continue to be listed and traded on NASDAQ after it delists from the BSE.

Any interested person may, on or before April 29, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-8227 Filed 4-13-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office and Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: SBIR Policy Directive.

Form Nos.: SOP 6501 2.

Frequency: Annually.

Description of Respondents: Directive details program procedures and sets forth the specific kinds of information needed for the agency to fulfill its mandate to monitor and coordinate the Government wide activities of the SBIR Program.

Annual Responses: 18.

Annual Burden Hours: 90.

Title: Competition with small business by rural electric and telephone cooperatives in unregulated businesses.

Form Nos.: Research study.

Frequency: One time collection.

Description of respondents: The purpose of this study is to examine the scope and degree of the problem from rural electric and rural telephone cooperatives, review actual cases, reviews applicable laws and also make recommendations.

Annual Responses: 600.

Annual Burden Hours: 150.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 88-8147 Filed 4-13-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-5243]

Alabama Small Business Investment Company, Inc.; Issuance of a Small Business Investment Company License

On January 8, 1988, a notice was published in the **Federal Register** (53 FR 589) stating that an application had been filed by Alabama Small Business Investment Company, Inc., Birmingham, Alabama, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license to operate as a small business investment company.

Interested parties were given until the close of business February 7, 1988, to submit their comments to SBA. No significant comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-5243 on April 5, 1988, to Alabama Small Business Investment Company, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: April 8, 1988.

[FR Doc. 88-8146 Filed 4-13-88; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591..

Requests for information, including copies of the information collection proposed and supporting documentation, shoud be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401: (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Power Distributors Monthly Report to TVA.

Frequency of Use: Monthly.

Type of Affected Public: Businesses or other for-profit and small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1920.

Estimated Total Annual Burden Hours: 960.

Need For and Use of Information: This monthly collection supplies TVA with financial information to assist in making timely management decisions on electric power rates, finances, and other long- and short-term plans.

John W. Thompson.

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 88-8141 Filed 4-13-88; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-88-025]

National Boating Safety Advisory Council Subcommittee on Consumer Education; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory

Council's Subcommittee on Consumer Education to be held on Monday, May 9, 1988 at the Monteleone Hotel, 214 Royal Street, New Orleans, Louisiana, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Status report on Alcohol and Recreational Boating Workshop.
2. Summary of State Operating Under the Influence Laws.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC.

April 11, 1988.

W.P. Hewel,

Captain, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 88-8194 Filed 4-13-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD-88-026]

National Boating Safety Advisory Council Subcommittee on Hull Identification Number (HIN); Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Hull Identification Number (HIN) to be held on Monday, May 9, 1988 at the Monteleone Hotel, 214 Royal Street, New Orleans, Louisiana, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Discuss the possibility of adding additional characters to Hull Identification Number (HIN) to assist in recovering stolen boats.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC.

April 11, 1988.

W.P. Hewel,

Captain, U.S. Coast Guard Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 88-8195 Filed 4-13-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD—88-024]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Tuesday and Wednesday, May 10 & 11, 1988 at the Monteleone Hotel, 214 Royal Street, New Orleans, Louisiana, beginning at 9:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows:

1. Introduction of new Council Sponsor.
2. Review of action taken at the 40th meeting of the Council.
3. Members' items.
4. Executive Director's report.
5. Consumer Education Subcommittee report.
6. HIN Regulation Subcommittee report.
7. Presentation on Oregon's safety programs in schools.
8. Presentation on vertical sector sidelights for unmanned barges.
9. Informational update on vertical sector sidelights for sailboats.
10. Report of Boating Education Seminar in Louisiana.
11. Presentation on MARPOL Annex V need and proposed requirements.
12. Update on boating standards program.
13. Review of Rulemaking.
14. Final report on Personal Flotation Device (PFD) pamphlet project.
15. Presentation on problem of PFD ride-up.
16. Report on 1987 Boating Statistics.
17. Report on Safe Boating Week 1988.
18. Remarks by Chief, Office of Navigation and Waterway Systems.
19. Reply to members' items.
20. Chairman's session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC.

April 11, 1988.

W. P. Hewel,

Captain, U.S. Coast Guard Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 88-8196 Filed 4-13-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Treasury Decision Proclaiming Annual Secretary's Percentage for Foreign Life Insurance Companies and Providing Estimated Tax Guidance for All Foreign Insurance Companies

AGENCY: Department of the Treasury.

ACTION: Proclamation.

SUMMARY: This proclamation announces the percentage to be used to compute the income tax liability for 1987 of foreign corporations carrying on life insurance business in the United States and provides instructions for computing the estimated tax and the installment payments of estimated tax for 1988 for all foreign insurance companies.

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Jenny Wahl, Office of Tax Analysis, U.S. Treasury Department, Washington, DC 20220. (202-566-2589), not a toll free call.

SUPPLEMENTARY INFORMATION: This proclamation, issued each year by the Secretary of the Treasury, announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance business in the United States. In addition, the proclamation provides instructions for computing the estimated tax and the installment payments of estimated tax for 1988 for all foreign insurance companies.

Proclamation

For purposes of computing the 1987 income tax of foreign corporations carrying on a life insurance business, a percentage of 16.2 percent shall be used in determining the "minimum figure" under former section 813. For purposes

of computing the estimated tax and the installment payments of estimated tax for the taxable year 1988, all foreign insurance companies (life and property-casualty companies) will be allowed to rely on their actual investment income for purposes of computing investment income under section 842, as amended by the Omnibus Budget Reconciliation Act of 1987, until publication by the Secretary of the domestic asset/liability percentages and the domestic investment yields under section 842. No additions to tax shall be made because of any underpayment of estimated tax for the taxable year 1988 if: (1) The taxpayer timely pays estimated tax based on its actual net investment income, and (2) the taxpayer deposits the full amount due under section 6655 of the Code with its first estimated tax payment following publication of the domestic asset/liability percentages and the domestic investment yields under section 842.

This proclamation was issued without notice and public procedure because the public cannot effectively participate in the determination of the percentage required under former section 813. It is computed from information contained in income tax returns that are not open to the public. The proclamation was not published prior to its effective date because the percentage is computed on the basis of data which was not then available.

O. Donaldson Chapoton,

Assistant Secretary (Tax Policy).

[FR Doc. 88-8208 Filed 4-13-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Masterworks from Munich" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about May 29, 1988, to on or about September 5, 1988, and at the Cincinnati Art Museum, Cincinnati, Ohio, beginning on or about October 25, 1988, to on or about January 8, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

C. Normand Poirier,

Acting General Counsel.

Date: April 7, 1988.

[FR Doc. 88-8157 Filed 4-13-88; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7988, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 53, No. 72
Thurday, April 14, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

April 12, 1988.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, April 22, 1988, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Briefing: Congressional Legislation to Amend the Fair Housing Act of 1968
IV. SAC Report: "Education Vouchers in Louisiana"
V. SAC Report: "Ethic Intimidation Data in Pennsylvania"
VI. Interim Appointments for Colorado SAC
VII. SAC Recharters
VIII. Presentations by SAC Chairs

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division (202) 376–8105.

William H. Gillers,

Solicitor, 376–8514

[FR Doc. 88–8249 Filed 4–12–88; 9:45 am]

BILLING CODE 6335–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:55 p.m. on Friday, April 8, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: April 11, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88–8266 Filed 4–12–88; 11:13 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 88–7771.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 14, 1988, 10:00 a.m.

THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:

Draft AO 1987–34—Leslie J. Kerman on behalf of Telenet Communications Corporation.
Draft AO 1988–10—William E. Taylor.

* * * * *

DATE AND TIME: Tuesday, April 19, 1988, 10:a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, April 21, 1988, 10:a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988–9 –Michael B. Brewer on behalf of Free Voters of Mid America, Inc.
Draft AO 1988–14—Neil C. Taylor on behalf of Atlantic Marine, Inc. and Atlantic Dry Dock Corp.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer. Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88–8346 Filed 4–12–88; 4:00 pm]

BILLING CODE 6715–01–M

PAROLE COMMISSION

Pursuant to the Government In the Sunshine Act (Pub. L. 94–409) [5 U.S.C. 552b]

DATE AND TIME: Tuesday, April 19, 1:30 p.m. eastern daylight time.

PLACE: 5550 Friendship Boulevard Chevy Chase, Maryland 20815.

STATUS: Open—Meeting to be conducted by conference telephone call.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

Whether the Commission should include mandatory release cases in its Electronic Monitoring Project in order to ensure that adequate numbers of participants are involved to make the project viable.

AGENCY CONTACT: James Beck, Director Research Section, United States Parole Commission, (301) 492–5936.

Date: April 11, 1988.

Michael Stover,

Acting General Counsel, U.S. Parole Commission.

[FR Doc. 88–8287 Filed 4–12–88; 11:49 am]

BILLING CODE 4410–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 18, 1988:

A closed meeting will be held on Tuesday, April 19, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10)

permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 19, 1988, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alden Atkins at (202) 272-2014.

Jonathan G. Katz,

Secretary.

April 11, 1988.

[FR Doc. 88-8294 Filed 4-12-88; 12:09 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 72
Thursday, April 14, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Proposed Additions

Correction

In notice document 88-7747 appearing on page 11694 in the issue of Friday, April 8, 1988, make the following correction:

In the second column, under "*Commodities*", the third entry under "Enamel, Aerosol" should read "8010-00-159-4519".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of General Counsel

10 CFR Part 1010

Conduct of Employees; Statements of Employment and Financial Interest, and Interests in Energy Concerns

Correction

In rule document 88-7471 beginning on page 11240 in the issue of Wednesday, April 6, 1988, make the following corrections:

Appendix I-[Corrected]

1. On page 11241, in the third column, in the 10th line of Appendix I, "for" should read "from".

2. On page 11242, in the first table in the first column, the following should be added to the beginning of the text of footnote 1: "(Except Office of Hearings and Appeals)."

3. On the same page, in the same column, in the second table, the following should be added to the beginning of the text of footnote 2: "(Office of Hearings and Appeals)."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Procedural Change in Requesting Comments on Species Listings in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

Correction

In rule document 88-6647 beginning on page 9945 in the issue of Monday, March 28, 1988, make the following corrections:

1. On page 9945, in the third column, in the **SUMMARY**, in the 8th, 17th and 28th lines, "Appendix II" should read "Appendix III".

2. On page 9946, in the second column, in the first complete paragraph, in the 18th line, "provision" should read "provisions".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeworkers in Certain Industries; Records To Be Kept By Employers

Correction

Note: This is a republication of a correction appearing on page 11590 in the issue of Thursday, April 7, 1988. It is being republished because two paragraphs inadvertently appeared in a correction to an Environmental Protection Agency document.

In proposed rule document 88-6926 beginning on page 10342 in the issue of Wednesday, March 30, 1988, make the following corrections:

1. On page 10342, in the first column, under "**AGENCY**", remove "Employment Standards Administration".

2. On the same page, in the same column, under "**ACTION**", the third line should read "comments on additional enforcement provisions, and other".

3. On the same page, in the second column, under "**Background**", in the third paragraph, in the second line, "increased 56.2%" should read "increased from 56.2%".

4. On the same page, in the third column, in the second complete paragraph, in the 15th line, "restricted" was misspelled.

5. On page 10343, in the second column, under "**Wage-Hour Investigation Procedures**", in the ninth line, "further" should read "future".

6. On page 10344, in the first column, under "**Denial or Revocation of a Homework Certificate**", in the second line, "authorized" should read "authority".

7. On page 10345, in the 1st, 2nd and 3rd columns, the italicized headings, "Civil Money Penalties", "Administrative Procedures" and "Bonding or Security Payments" should have been bold headings.

8. On the same page, in the second column, in the first complete paragraph, in the 19th line "*Bros.*" should read "*Bro.*"; and in the 20th line "(1944)" should read "(1944)).".

9. On the same page, in the same column, in the last paragraph, in the third line "followed" should read "following".

10. On page 10346, in the 1st and 2nd columns, the italicized headings, "Homework in the Jewelry Industry", "Homework in the Women's Apparel Industry" and "Model Garment Programs", should have been bold headings.

11. On the same page, in the first column, in the last paragraph, in the eighth line, "lift that" should read "lift the".

12. On the same page, in the third column, under "**Regulatory Flexibility Act**", in the third paragraph, in the first line, "Bureau" should read "Bureaus".

§ 530.101 [Corrected]

13. On page 10348, in the second column, in § 530.101, in the fifth line, "to" should read "of".

§ 530.205 [Corrected]

14. On page 10349, in the third column, in § 530.205(h), in the ninth line, "homeworkers" should read "homeworker"; and in the 10th line, "certificates" should read "certificate".

§ 530.301 [Corrected]

15. On page 10350, in the second column, in § 530.301, in the third line, "violations" should read "violation".

§ 530.402 [Corrected]

16. On the same page, in the third column, in § 530.402(e), in the fourth

line, "Administration" should read "Administrator".

§ 530.411 [Corrected]

17. On page 10351, in the third column, in § 530.411(b), in the first line, "hearing to" should read "hearing pursuant to".

PART 516—[CORRECTED]

18. On page 10352, in the second column, under "**Authority**", in the second line, insert a period after "29 U.S.C. 211".

§ 516.31 [Corrected]

19. On the same page, in the third column, in § 516.31(c), in the 20th line, "wages be" should read "wages to be".

BILLING CODE 1505-01-D

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records, Deletions, Revisions

Correction

In notice document 87-29941 beginning on page 49541 in the issue of Thursday December 31, 1987, make the following corrections:

1. On page 49541, in the third column, the **EFFECTIVE DATE** should read "December 31, 1987".

2. On page 49542, in the first column, in the first complete paragraph, in the ninth line, after "Canal", insert "Zone".

3. On the same page, in the first column, in the second complete paragraph, in the first line, "of" should read "to".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3274-7]

Standards of Performance for New Stationary Sources; Revision of Method 25 of Appendix A

Correction

Note: This is a republication of a correction beginning on page 11590 in the issue of Thursday, April 7, 1988. It is being republished because two paragraphs from a Department of Labor correction inadvertently appeared in this correction.

In rule document 88-2804 beginning on page 4140 in the issue of Friday, February 12, 1988, make the following corrections:

PART 60—[CORRECTED]

Appendix A—[Corrected]

1. On page 4146, in the second column, the 24th line should read "ρ = Density of liquid injected, g/cc."

2. On the same page, the formulas, appearing after paragraphs 6.4 and 6.8 should appear as follows:

6.4 . . .

$$C_t = \left[\frac{\frac{P_{tf}}{T_{tf}}}{\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}}\right]\left[\frac{1}{r}\sum_{j=1}^{r} C_{tm_j}\right] \qquad \text{Eq. 25-3}$$

6.8 . . .

$$\text{Percent recovery} = 1.604\,\frac{M}{L}\,\frac{V_v}{\rho}\,\frac{P_t}{T_f}\,\frac{C_{cm}}{N} \qquad \text{Eq. 25-7}$$

BILLING CODE 1505-01-D

Federal Register

Thursday
April 14, 1988

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52

Federal Acquisition Regulation (FAR); Double Recoupment of Taxes on FMS Contracts; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation (FAR); Double Recoupment of Taxes on FMS Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revisions to FAR clauses 52.229–8 and 52.229–9 regarding taxes on foreign cost-reimbursement contracts.

DATE: Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before June 13, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Sercretariat (VRS), 18th & F Streets NW.; Room 4041, Washington, DC 20405.

Please cite FAR Case 88–22 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

FAR clauses 52.229–8 and 52.229–9 regarding taxes on foreign cost-reimbursement contracts are being revised to require that, if a contractor or subcontractor obtains a reduction of its U.S. income tax liability because of foreign tax credits under the Internal Revenue Code, the amount of the reduction shall be credited back to the U.S. Government at the time the foreign tax credit is taken. A similar clause, FAR 52.229–6, applies to foreign fixed-price contracts. This revision precludes the possibility of a "wind-fall" from the payment of foreign taxes (for which contractors are reimbursed by the U.S. under a contract) resulting from a contractor or subcontractor receiving a credit on its U.S. income taxes.

Under current FAR provisions, a U.S. contractor performing a Foreign Military Sales (FMS) contract in a foreign country may properly pay an income tax to the host country and be reimbursed by the U.S. Government for that tax as an allowable cost under the contract. The contractor may then receive a double recovery of the tax because the foreign tax credit will reduce the contractor's U.S. income tax liability to the extent of the tax. The changes being proposed will preclude this double recovery by requiring that the amount of the reduction be credited back to the U.S. Government at the time the foreign tax credit is taken.

B. Regulatory Flexbility Act

The proposed rule may have an impact on certain contractors doing business in foreign countries under FMS contracts, and therefore, publication for public comments is required. The proposed rule is not expected to have a significant impact on a substantial number of small entities because these types of cost-reimbursement FMS contracts performed in foreign countries are generally performed by large entities. Therefore, an Initial Regulatory Flexibility Analysis has not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: April 7, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 137; and 42 U.S.C. 2473(c).

2. Section 52.229–8 is amended by inserting a colon in the introductory text following the word "clause" and deleting the remainder of the sentence; by removing in the title of the clause the date "APR 1984" and inserting in its place the date "APR 1988"; by designating the existing clause as paragraph (a); by adding paragraph (b); and by removing the derivation line following "(End of clause)", to read as follows:

52.229–8 Taxes—foreign cost-reimbursement contracts.

* * * * *

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that may be offset against the Contractor's or subcontractor's tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the credit shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

3. Section 52.229–9 is amended by inserting a colon in the introductory text following the word "clause" and deleting the remainder of the sentence; by removing in the title of the clause the date "APR 1984" and inserting in its place the date "APR 1988"; by designating the existing clause as paragraph (a); by adding paragraph (b); and by removing the derivation line following "(End of clause)", to read as follows:

52.229–9 Taxes—cost-reimbursement contracts with foreign governments.

* * * * *

(b) If any subcontractor obtains a foreign tax credit that may be offset against the subcontractor's tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the credit shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

[FR Doc. 88–8154 Filed 4–13–88; 8:45 am]

BILLING CODE 6820–61–M

Federal Register

Thursday
April 14, 1988

Part III

Department of Transportation

Federal Highway Administration

49 CFR Parts 383 and 391

Commercial Driver's License Program; Waivers; Request for Comments; Notice of Petition

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383 and 391

[FHWA Docket No. MC-88-8]

Commercial Driver's License Program; Waivers; Request for Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of petition; request for comment.

SUMMARY: The FHWA is requesting comments from interested parties on petitions submitted by the American Farm Bureau Federation, the New York State Fire Safety Advisory Board, the U.S. Department of Defense (DOD), and other groups of drivers. The petitioners request exemptions from the commercial driver testing and licensing standards (49 CFR 383), and the provisions of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. L. 99-570, Stat. 3207-170). Specifically, the FHWA is considering waiver requests from drivers of six classes of vehicles:

(1) Farm vehicles;
(2) Firefighting equipment;
(3) Military vehicles;
(4) Transit buses;
(5) Certain vehicles used by railway companies; and
(6) Public utility vehicles.

The FHWA requests public comment on whether, if granted, the waivers would serve the public interest or diminish public safety.

DATE: Written comments must be received on or before May 16, 1988.

ADDRESS: All signed, written comments should refer to the docket number that appears at the top of this document and should be submitted Federal Highway Administration, Room 4232, Office of Chief Counsel, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except legal holidays. Commenters who want to be notified that the FHWA received their comments should include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Office of Motor Carrier Standards, (202) 366-4001; or Mr. Paul L. Brennan, Office of the Chief Counsel, HCC-10, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t. Monday through Friday, except legal holidays.

Background

The Commercial Driver's License Program was established by the Commercial Motor Vehicle Safety Act of 1986 (the Act). The Act requires that the driver of a commercial motor vehicle (1) have a single driver's license with a single driving record, (2) be tested for the knowledge and skills needed to drive a vehicle representative of the vehicle that they will be licensed to drive, and (3) be disqualified from driving a commercial vehicle if the driver commits certain criminal or traffic violations.

The Congress intended that the provisions of the Act apply both to interstate and intrastate drivers, involved in trade, traffic, and transportation in all sectors of the economy. Drivers of farm vehicles, firefighting equipment, military vehicles, and transit buses are subject to the commercial driver's license requirements; however, the requirements do not apply to a driver of vehicle for personal use, such as a recreational vehicle that would otherwise meet the definition of a commercial motor vehicle.

Single License, Notifications, and Disqualifying Offenses

The FHWA published a final rule for the single license, notification reuirements, and disqualification provisions on June 1, 1987 (52 FR 20574; Docket No. MC-125). The final rule was effective July 1, 1987. "Commercial motor vehicle" is defined as a vehicle:

(1) With a gross vehicle weight rating (GVWR) of 26,001 or more pounds;

(2) Designed to transport more than 15 passengers (including the driver); or

(3) Transporting hazardous materials in such quantities that the vehicle is required to be placarded under the Hazardous Materials Transportation Regulations (49 CFR 383.5).

Federal regulations prohibit the driver of a commercial motor vehicle from having more than one license (49 CFR 383.21). The provision also was effective July 1, 1987. Exceptions are provided for a person who moves and applies for a new driver's license (10-day exception) and, until December 31, 1989, for a person who holds more than one license because of State laws or regulations in effect before October 27, 1986.

Effective July 1, 1987, a driver of a commercial motor vehicle who commits a violation outside his/her State must notify the State which issued the license. A driver also must notify his/her employer of any convictions and when his/her driver's license is suspended, revoked or canceled. An applicant for a job as a commercial motor vehicle driver must inform the prospective employer of previous employment as an "operator of a commercial motor vehicle," if any, for the 10-year period before the application date. An employer is prohibited from knowingly allowing a employee to operate a commercial motor vehicle if the employee's driver's license to operate such vehicle has been suspended, revoked, or canceled, if the employee has been disqualified from driving, or if the employee has more than one license (49 CFR 383.31-383.37)

A driver who violates the single license or notification requirements, or an employer who violates the employer requirements is subject to a maximum $2,500 civil penalty. A driver or employer who knowingly and willfully violates the requirements is subject to a maximum $5,000 criminal penalty and/or 90 days of imprisonment.

The regulation also requires a 1-year disqualification for the first offense of driving a commercial motor vehicle under the influence of alcohol or a controlled substance, leaving the scene of an accident, or using a commercial motor vehicle in the commission of a felony. If the offense occurs while the driver is operating a commercial motor vehicle that is placarded for hazardous materials, the minimum disqualification is 3 years. Second offenders of the offenses are disqualified for life, as are first offenders who use a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of controlled substances (49 CFR 383.51).

Proposed Testing and Licensing Standards

The FHWA published the proposed testing and licensing standards required by the Act on December 11, 1987 (52 FR 47326; Docket No. MC-87-18). By October of 1993, all 50 States and the District of Columbia would have to comply with the standards when licensing commercial truck and bus drivers, or risk losing a portion of their highway funds. The proposed standards would require that the driver demonstrate the necessary skills and ability to operate a truck or bus safely, based on the type of vehicle to be operated. Drivers must be licensed under the proposed standards by April 1, 1992. A foreign driver of a commercial motor vehicle in the United States would have to meet comparable testing standards within the jurisdiction that

issued his/her driver's license, or be tested by a State.

A commercial driver's license is *not* a Federal license. States will continue to issue all drivers' licenses. In fact, each State will continue to oversee and administer all its testing and licensing procedures. Each State establishes its own testing and licensing fees for all drivers. For current drivers, the FHWA proposed that the State could substitute the skills-test requirement with a safe driving record, experience, or previous passage of an acceptable skills tests. States also would continue to establish the physical and medical qualifications for *intrastate* drivers, including the minimum age of the driver.

The current requirement that an *interstate* driver must be 21 years or older would not change under the proposed testing and licensing standards. An *interstate* driver operating a commerical vehicle transporting agricultural products or farm machinery must be at least 18, but there is not a Federal minimum age for an *interstate* driver who operates a farm vehicle of less than 10,001 pounds or within 150 miles of the farmer's farm (49 CFR 391.3).

The comment period for the Notice of Proposed Rulemaking (NPRM) for the proposed testing and licensing standards closed February 9, 1988. The FHWA received approximately 1,200 comments to the docket. The FHWA is reviewing the comments and plans to issue the final testing and licensing standards this June.

Waiver Procedures

Section 12003 of the Act provides the Secretary with the authority to waive any class of drivers or vehicles from any or all of the provisions of the Act or the implementing regulations, if the Secretary determines that the "waiver is not contrary to the public interest and does not diminish the safe operation of commerical vehicles." Under Federal regulations (49 CFR 383.7), a person may petition the Federal Highway Administrator for a waiver of compliance by a class of persons or a class of commercial motor vehicles with any or all requirements of the Act or implementing regulations. The Administrator may deny the petition, if he determines it is without merit. If the Administrator determines that the petition may have merit, the FHWA will publish a notice in the **Federal Register** to provide interested persons an opportunity for comment. After the opportunity for comment, the Administrator may grant or deny the waiver. The FHWA must publish a notice of its decision on the petition and its rationale in the **Federal Register.**

Petitions

The FHWA is considering waiver requests from drivers of six classes of vehicles:

(1) Farm vehicles;
(2) Firefighting equipment;
(3) Military vehicles;
(4) Transit buses;
(5) Certain vehicles used by railway companies; and
(6) Public utility vehicles.

Several hundred individuals and associations requested exemptions from the Commercial Driver's License Program through their comments on regulations for the program. The majority of the requests for exemptions were from drivers of farm vehicles. Drivers of firefighting equipment, transit buses, motor vehicles owned by railway companies, and public utility vehicles also requested exemptions. The FHWA is combining the petitions and requests in this notice.

In this portion of the notice, the FHWA is requesting specific views, information, and data that it should consider when determining whether (or not) each waiver would be contrary to the public interest or would diminish the safe operation of commercial vehicles. The FHWA is posing questions to assist in the review of comments on the notice, but encourages commenters to provide any additional facts or views pertaining to the waiver requests.

Drivers of Farm Vehicles

The American Farm Bureau Federation petitioned the FHWA on January 27, 1988, requesting that "farmers with farm plates on their trucks who drive their truck less than 15,000 miles per year be exempt from the newly enacted commercial driver's license requirements." Drivers of farm vehicles are affected by the commercial driver requirements because some of the vehicles weigh more than 26,000 pounds GVWR, and many of the vehicles are used to transport chemicals in amounts that require a placard.

The petitioners generally believe that drivers of farm vehicles should be exempt from the Commercial Driver's License Program because they do not consider themselves to be commercial drivers. The American Farm Bureau Federation notes that farmers drive many fewer miles annually than the typical over-the-road trucker, as farmers are not on the road many hours a day, day after day. The American Farm Bureau Federation also indicates that 45 percent of the farmers are part-time farmers; many farms are small, family operations where anyone in the family may transport supplies to the farms or products to market. Many of the farmers who have petitioned believe that the testing and licensing requirements would create undue hardship and costly impacts for an already economically stressed agricultural community.

As part of the public docket for the NPRM on the proposed testing and licensing standards, the FHWA received over 500 requests from farm groups and individuals in the agricultural community requesting waivers from the commercial driver's license requirements. Aside from the American Farm Bureau Federation, some of the other groups who have commented on how the requirements affect farmers include:

—Arizona Cattlemen's Association;
—Colorado Cattlemen's Association;
—Farm Bureaus from 16 States (Arizona, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Minnesota, Nebraska, New Hampshire, New York, North Carolina, South Carolina, Tennessee, and Wisconsin);
—Farm Bureau Mutual Insurance Company;
—Georgia Agricultural Commodity Commission for Peanuts;
—Idaho Cattle Association;
—Kansas Association of Wheat Growers;
—Kansas Livestock Association;
—Kansas State Board of Agriculture;
—Minnesota Association of Wheat Growers;
—Minnesota Plant Food and Chemical Association;
—National Grange;
—Nebraska Beet Growers Association;
—North Dakota Milk Products Association;
—North Dakota State Wheat Commission;
—Oklahoma Peanut Commission;
—Pennsylvania State Grange;
—Red River Valley Sugarbeet Grower Association;
—Texas Cattle Association;
—Wisconsin Potato and Vegetable Growers Association Inc.; and
—Women Involved in Farm Economics.

In February 1987, the FHWA and the U.S. Department of Agriculture (USDA) initiated a series of research projects to develop driver and vehicle profiles, and accident statistics relating to the operation of farm trucks in the United States. In 1987, the USDA contracted with the Upper Great Plains Transportation Institute to collect information in the upper midwest region of the United States. The FHWA is also

working with the University of Michigan Transportation Research Institute to access its dataset (Trucks Involved in Fatal Accidents), the U.S. Census of Transportation, and other readily available data in order to compile more information on farmers. The FHWA expects the results from these efforts will be available later this spring.

Drivers of Firefighting Equipment

The New York State Fire Safety Advisory Board petitioned the Department on February 3, 1988, stating the Board is "adamant that the current licensing proposal under the Commercial Motor Vehicle Safety Act of 1986 cannot be complied with by the New York State's fire departments, and drivers of fire apparatus should be exempt from this Act." Petitioners for drivers of firefighting equipment also believe that they should be exempt from the commercial driver's license program because they are not typical commercial drivers. They are especially concerned about the economic burden and logistical problems of testing and licensing.

The New York State Fire Safety Advisory Board states that all 1,810 of New York's fire departments have apparatus that fall under the definition of commercial motor vehicle in the Act. The Board estimates that in New York alone a total of 94,000 fire personnel (of which 80,000 are volunteers) would need to be licenced under the new program.

The Prince George's County Fire Chief (Maryland) states that the County has many firefighting employees and volunteers who are residents of other States, including students from a local university's fire protection curriculum. The Fire Chief is concerned that these drivers would have to drive the fire equipment from Maryland to the skills testing sites in their States in order to be licensed, thus the Fire Chief requests an exemption "for fire and rescue personnel to drive commercial vehicles for emergency operation only."

In addition to the requests from the New York State Fire Safety Advisory Board and the Prince George's County Fire Chief, the FHWA also received several other requests to waive firefighters from the commercial driver's license requirements. For example, the FHWA received requests from several local fire districts in New York and the Fairhaven Fire District in California.

Drivers of Military Vehicles

The DOD petitioned the FHWA on March 18, 1988, requesting "a waiver for military drivers from the provisions of the 1986 Motor Vehicle Safety Act [sic]." The DOD petition is for "all active duty military personnel, Reserve and National Guard on active duty, to include personnel on full time National Guard duty, inactive duty training and National Guard military technicians." The DOD petition is for military drivers of DOD vehicles *only*. The DOD prefers that their civilian drivers be required to comply with the Act's provisions through their respective States.

The DOD believes that a waiver of military drivers is justified because the military enforces special training and discipline procedures for its drivers, and large military vehicles are in limited use on the public highways. In addition, the DOD notes that it has 10,500 "oversized vehicles of commercial design" which were operated 52 million miles on and off military installations in 1987; these vehicles were involved in accidents resulting in 3 fatalities (one on an installation, and the other two in a bus accident on an Interstate highway).

Based on these figures, the FHWA estimates that the fatal accident rate for DOD "oversized vehicles" would be approximately 5.8 fatal accidents per 100 million vehicle miles of travel (VMT). By comparison the fatal accident rate in 1985 for all vehicles was 2.2 fatal accidents per 100 million VMT (39,168 fatal accidents/1,774 hundred million VMT), and the fatal accident rate for trucks of 26,001 pounds and over was 6.4 fatal accidents per 100 million VMT (4,198 fatal accidents/65,611 million VMT).

Drivers of Transit Buses

The Amalgamated Transit Union petitioned the FHWA on July 30, 1987, requesting a waiver for public transit operators from the commercial driver's license requirements. The Union believes that the problems the Act was intended to correct—multiple licenses, lack of uniform testing and fitness requirements, and unsafe drivers—are not problems in the intracity segment of the transit industry.

The Union notes that "municipal transit operators are employed by one employer and operate for the most part intra-state * * *. [P]ublic transit agencies and their employees are already subject to a wide range of Federal, state and local rules and regulations affecting safety, equipment and other aspects of thir operations. Drivers, especially, are required to satisfy state licensing laws and comply with related regulations concerning the reporting of accidents and violations of state and local traffic laws. This system has served to ensure that unsafe operators are removed from service and subject to appropriate penalities, including suspensions, disqualifications and if necessary fines and/or jail terms."

Drivers of Motor Vehicles Used by Railway Companies

In commenting on the final rule on the Commercial Driver Licensing Standards (Docket No. MC–125), the Association of American Railroads (AAR) suggested in its July 31, 1987, letter that "DOT exempt all drivers of vehicles who, under state law, are not required to obtain commercial motor vehicle licenses, subject to a provision that the application of this exception would be inapplicable to drivers of tractor/trailer combinations." The AAR also suggested that "DOT exempt drivers who drive commercial motor vehicles less than a specified amount of mileage annually." The AAR suggested the exemption of such a broad population of drivers because "the problems arising from the application of the standards to the railroads are undoubtedly present for a wide variety of industries."

Railroads use a variety of vehicles that fall within the definition of a "commercial motor vehicle" for a variety of purposes—maintaining rail rights-of-way, transporting supplies (including railway torpedoes, and fusees, and oxygen and acetylene tanks), and transporting railroad crews. Railroad employees also position piggyback trailers at terminals. The AAR is especially concerned about the burden of the requirements on employees whose principal duty is not driving.

Drivers of Public Utility Vehicles

Virginia Power petitioned the FHWA on March 29, 1988, stating that "public utility vehicles do not meet the intent of the definition of commercial motor vehicle and should be excluded from compliance with these proposed [testing and license] regulations." Virginia Power believes that the Act intended to regulate common carriers, contract carriers, and private carriers of property for sale, lease, rent, or bailment.

Virginia Power also states, "The public utility industry employs the use of highly specialized vehicles specifically designed for routine maintenance and construction work on electrical equipment. The employees of utility companies are lineman, electricians, and maintenance men who drive merely to move from one service job to another within a specified district. The vehicles that they drive are not designed for over the road transportation of freight, and public utility employees do not drive excessively long hours on the road because their principal job is the repair

and maintenance of electrical equipment. In addition, public utility companies promote extremely aggressive safety programs, which has allowed the public utility industry to maintain an excellent highway safety record."

Questions on the Waiver Requests

In this portion of the notice, the FHWA is requesting specific views, information, and data that it should consider when determinig whether (or not) each waiver would be contrary to the public interest or would diminish the safe operation of commercial vehicles. The FHWA is posing the questions to assist in the review of comments on the notice, but strongly encourages commenters to provide any additional facts or views pertaining to the waiver requests.

(1) Should the FHWA grant waivers to any or all of the major groups—i.e., farmers, firefighters, public transit drivers, military drivers, railroad employees, and public utility employers—who have petitoned? On what basis should such waivers be granted or rejected?

(2) For purposes of granting a waiver, how should FHWA define "farmer," "firefighter," "public transit driver," "military driver," "railroad employee," and "public utility employee," and the vehicles which they operate? Would vehicle registration or a limit of driving within a 150-mile radius from place of employment be an acceptable basis to use in these definitions?

(3) Should the FHWA waive all the drivers within each group or selected ones—such as those who operate intrastate, drive less than a specified number of miles annually, drive the vehicles within a specified radius of the primary place of employment, or drive vehicles specially "registered" by the State (such as "farm vehicles")?

(4) Should the FHWA waive each group of drivers requesting exemptions from all the commercial driver's license requirements or only selected ones:

—Single license;
—Knowledge and skills test;
—Notifications; or
—Minimum disqualifications?

(5) Should the FHWA impose any restrictions on waivers?

(6) How many drivers and vehicles, by vehicle size, fall within the scope of each waiver request?

(7) What data or information are available on the drivers and vehicles in each group, such as annual vehicle miles traveled on public highways and the incidence of accidents resulting in fatalities, serious injuries, or property damage that support or reject the rationale for waiving certain groups of drivers?

(8) What portion of the mileage involves the transport of hazardous materials requiring a placard, what type of hazardous materials are transported, and what is the incidence of accidents involving vehicles transporting hazardous materials that resulted in fatalities, serious injuries, or property damage?

Note. Earlier in this notice, the FHWA cites data included in the DOD petition. The FHWA believes that similar data for farmers, firefighters, transit bus drivers, railroad, and public utility employees would be useful in reviewing the waiver requests and would appreciate data for time periods longer than 1 year, if available.

Scope of Waivers

The FHWA intends to take a reasonable, common-sense approach in implementing the Commercial Driver's License Program. Many States already recognize certain drivers, such as those in the farm community, when issuing vehicle registrations and driver's licenses. The FHWA believes that balance must be determined between potential burdens associated with the Act's requirements on certain drivers and the safety consequences of waiving all or any of the Act's requirements for such drivers. For example, if the FHWA waived the single-license, single-record requirement and the minimum disqualification provisions for any driver of a large or heavy vehicle, some drivers could obtain multiple licenses, and disqualified drivers could unwittingly be allowed to operate a "waived" class of heavy trucks or buses, especially current drivers of these vehicles.

From a safety standpoint, therefore, it may be appropriate to grant a waiver that is limited *only* to testing and licensing requirements for commercial motor vehicle operations that are regional or local in nature and that do not effect the public over an extended period of vehicle operation. The FHWA requests comments on "where to draw the line," i.e., whether a waiver should be granted (1) for all or only certain of the Commercial Driver's License requirements—the single-license, single-record; notifications; knowledge and skills tests for a representative vehicle; and the minimum disqualifications; and (2) for all or only certain of the petitioners—classes drivers or vehicles including drivers of farm vehicles, firefighting equipment, military vehicles, transit buses, and certain motor vehicles used by railway and public utility companies.

In closing, the FHWA believes that "where to draw the line" is important to consider with respect to the balance between potential burdens and safety impacts when addressing the concerns of drivers of farm vehicles, firefighting equipment, and other specialized vehicles. Under the proposed testing and licensing standards, each State would be free to devise special license *classifications, endorsements,* or *restrictions* (beyond the minimum Federal groupings) and special *tests* for any group of vehicles. The FHWA, however, is willing to consider waivers and to provide the States additional discretion in order to help reduce the burden on these drivers, if it is in the public interest and the safe operation of a commercial motor vehicle is not diminished. Commenters are requested to provide data or information that demonstrate whether or not additional State discretion would serve the public interest and diminish the safe operation of commercial motor vehicles. The FHWA also encourages commenters to provide any additional facts or views pertaining to the waiver requests.

Authority: Title XII of Pub. L. 99-570, 100 Stat. 3207 170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

Issued on: April 11, 1988.

Robert E. Farris,

Deputy Administrator Federal Highway Administration.

[FR Doc. 88-8358 Filed 4-13-88; 8:50 am]

BILLING CODE 4910-22-M

Reader Aids

Federal Register

Vol. 53, No. 72

Thursday, April 14, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

10519-10868.....1
10869-11030.....4
11031-11238.....5
11239-11486.....6
11487-11632.....7
11633-11814.....8
11815-11990.....11
11991-12136.....12
12137-12370.....13
12371-12508.....14

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5784.....10519
5785.....10521
5786.....10523
5787.....11031
5788.....11489
5789.....11809
5790.....11811
5791.....11813
5792.....12365
5793.....12367
5794.....12369

Executive Orders:
12634.....11041
12635.....12134

Administrative Orders:
Memorandums:
Mar. 31, 1988.....11039
Presidential Determinations:
No. 88-10 of February 29, 1988.....11487

5 CFR

831.....11633
842.....11633
1633.....11815

Proposed Rules:
1632.....11864
2431.....10885

7 CFR

2.....11636
300.....10525
301.....11825
400.....10526
907.....12371
908.....12371
910.....10527, 11636
911.....11830
917.....11832
929.....12373
946.....11043
981.....12374
1032.....11637
1064.....11590
1126.....11638
1421.....11239
3600.....11639
3601.....11639

Proposed Rules:
6.....11091
53.....10545
54.....10545
449.....11299
917.....11669
918.....11867
946.....12423
949.....10887
1030.....10894
1065.....12424
1106.....11092
1497.....11474
1498.....11474
1530.....11098
1700.....11511
1701.....10545

8 CFR

Proposed Rules:
3.....11300
208.....11300
236.....11300
242.....11300
253.....11300

9 CFR

77.....11491
92.....11043

Proposed Rules:
78.....12019

10 CFR

430.....10869
600.....12137
1010.....11240, 12497

Proposed Rules:
2.....11310
50.....11311, 12425

12 CFR

202.....11044
205.....11046
226.....11047, 11055
229.....11832
265.....11640
563.....11242, 11243
611.....12140
615.....12140

14 CFR

Ch. III.....11004
39.....11246, 11641-11643, 11837, 11838, 12141, 12376
71.....10528, 11020, 11060, 11061, 11839-11841
97.....11062, 12377
121.....12358
135.....12358

Proposed Rules:
Ch. I.....11868
21.....11869
23.....11869
27.....10826, 11162
29.....10826, 11162
39.....11674-11676, 11678, 11871, 12427
71.....10546, 11100, 11101
73.....11102

16 CFR

13.....11247, 12379

48 CFR

15 10828
25 12128
31 ..... 10828, 12128
52 ..... 10828, 12128
215 11073
227 10780
242 11073
252 ..... 10780, 11073
2804 12421
2832 12421
2852 12421

Proposed Rules:

43 11795
47 11795
52 ..... 11795, 12501
916 11318
931 11318
952 11318
1505 11519
1506 11519

49 CFR

387 12158
533 11074
571 11280
1160 10536

Proposed Rules:

171 ..... 11320, 12442
172 12442
173 ..... 11320, 12442
174 12442
175 12442
176 12442
177 ..... 11618, 12442
178 12442
179 12442
192 10906
383 12504
391 12504
571 11105
840 11520
1185 12443

50 CFR

17 ..... 10879, 11609, 11612
23 12497
285 11510
301 10536
672 11297

Proposed Rules:

18 12043
228 12169
644 11321
658 12046

LIST OF PUBLIC LAWS

Last List April 6, 1988

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S. 2151/Pub. L. 100-277

To amend section 416 of the Agricultural Act of 1949, and for other purposes. (Apr. 4, 1988; 102 Stat. 67; 3 pages) Price: $1.00

H.R. 4263/Pub. L. 100-278

To designate interstate route I-195 in the State of New Jersey as the "James J. Howard Interstate Highway." (Apr. 6, 1988; 102 Stat. 70; 1 page) Price: $1.00

H.J. Res. 470/Pub. L. 100-279

To designate March 29, 1988, as "Education Day, U.S.A." (Apr. 6, 1988; 102 Stat. 71; 1 page) Price: $1.00

H.J. Res. 519/Pub. L. 100-280

To continue the withdrawal of certain public lands in Nevada. (Apr. 6, 1988; 102 Stat. 72; 1 page) Price: $1.00

S. 1397/Pub. L. 100-281

To recognize the organization known as the Non Commissioned Officers Association of the United States of America. (Apr. 6, 1988; 102 Stat. 73; 4 pages) Price: $1.00

S.J. Res. 206/Pub. L. 100-282

To designate April 8, 1988, as "Dennis Chavez Day." (Apr. 6, 1988; 102 Stat. 77; 1 page) Price: $1.00

S. 2117/Pub. L. 100-283

Age Discrimination Claims Assistance Act of 1988. (Apr. 7, 1988; 102 Stat. 78; 3 pages) Price: $1.00

H.R. 3981/Pub. L. 100-284

To make section 7351 of title 5, United States Code, inapplicable to leave transfers under certain experimental programs covering Federal employees, except as the Office of Personnel Management may otherwise prescribe. (Apr. 7, 1988; 102 Stat. 81; 1 page) Price: $1.00

H.J. Res. 480/Pub. L. 100-285

Granting the consent of the Congress to amendments made by Maryland, Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Apr. 7, 1988; 102 Stat. 82; 4 pages) Price: $1.00

S.J. Res. 223/Pub. L. 100-286

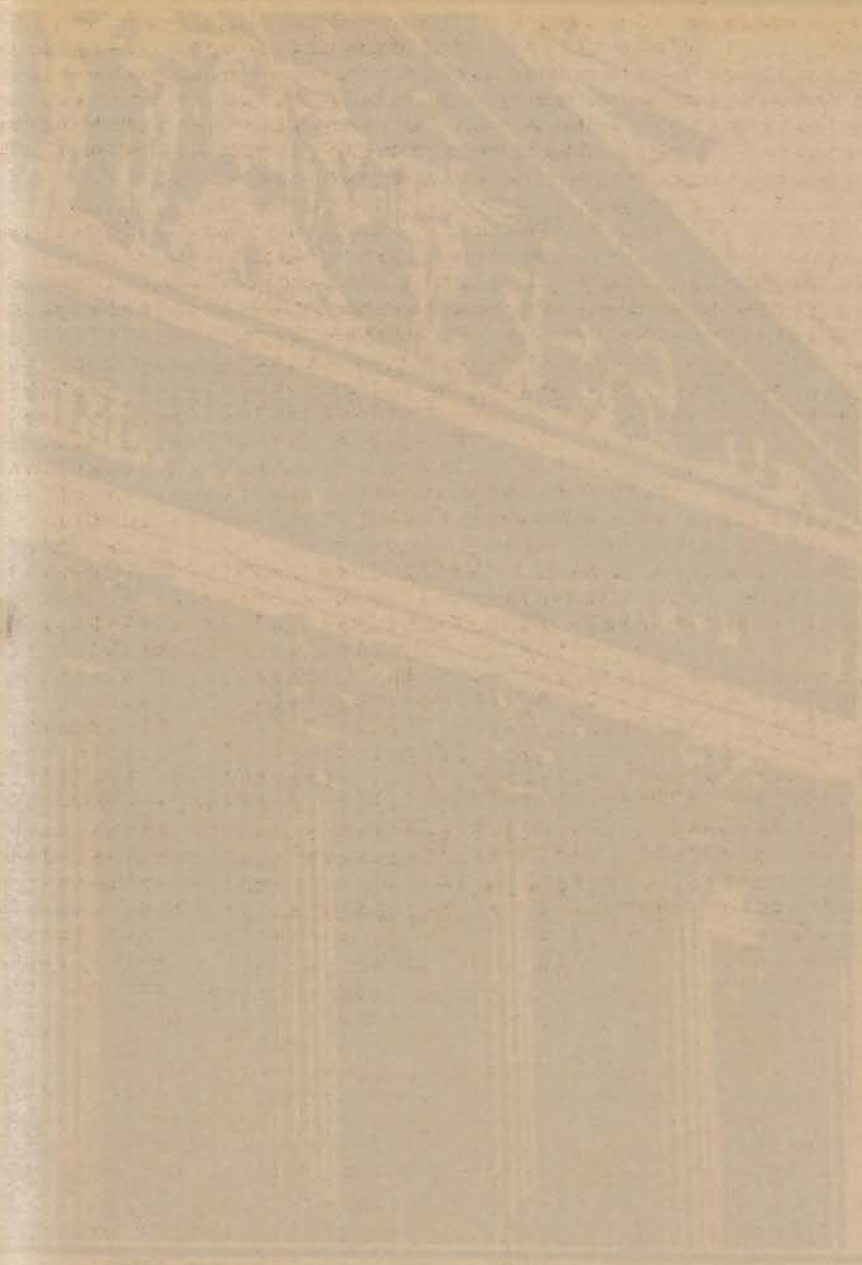
To designate the period commencing on April 10, 1988, and ending on April 16, 1988, as "National Productivity Improvement Week." (Apr. 7, 1988; 102 Stat. 86; 1 page) Price: $1.00

S.J. Res. 245/Pub. L. 100-287

To designate April 21, 1988, as "John Muir Day." (Apr. 7, 1988; 102 Stat. 87; 1 page) Price: $1.00

S.J. Res. 260/Pub. L. 100-288

To designate the week beginning April 10, 1988, as "National Child Care Awareness Week." (Apr. 7, 1988; 102 Stat. 88; 1 page) Price: $1.00



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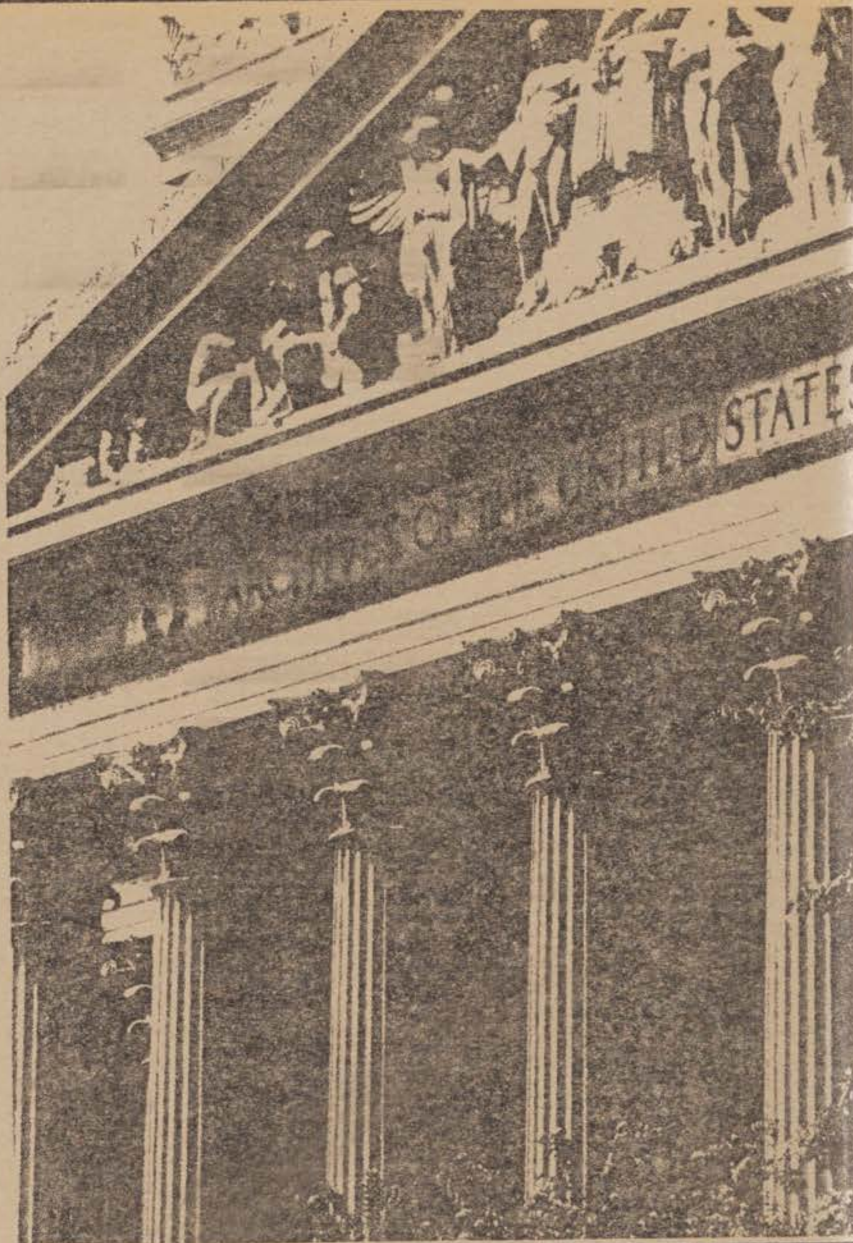

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